



An
Bord
Pleanála

Inspector's Report ABP-311674-21.

Development

House.

Location

Coolkirky, Riverstick, Co Cork.

Planning Authority

Cork County Council.

Planning Authority Reg. Ref.

21/5697.

Applicant(s)

Darragh McCarthy.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Carroll Daly & Others.

Observer(s)

Mary Daly.

Date of Site Inspection

27/01/2022.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Coolkirky, Riverstick, Co Cork, approximately 2km to the north of the village of Riverstick. The subject site is accessed off the R600, the Cork City to Kinsale road and over a local road. The site is located off a cul-de-sac laneway which currently serves one other house, granted permission under PA ref: 11/6309. The site is set back from the public road and will be accessed over the laneway for a distance of approximately 90m. The subject site is taken from a larger field which is indicated as being land under family ownership. There are a number of one-off dwellings located off a second laneway to the west of the subject site.
- 1.2. The subject site has a stated area of 0.26 hectares and is currently greenfield and under grass. The applicants parents are living in the house located to the north east of the subject site, and I note that the address given is Glenny, Riverstick as opposed to Coolkirky, Riverstick.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the construction of a dwellinghouse, domestic garage, on site wastewater treatment unit and all associated site works., all at Coolkirky, Riverstick, Co Cork.
- 2.2. The application included the following documents:
 - Plans and particulars
 - Completed planning application form
 - Supplementary Planning Application form
 - Letter of consent from the landowner
 - Soakpit design calculations
 - Site Characterisation Report
- 2.3. The proposed house comprises a two-storey building which is to be located to the northern area of the overall site and will rise to an overall height of approximately 8.3m. The house will be finished in a painted render with natural blue/black slate to

the roof. The material of the windows and doors is not clearly detailed. The house will provide accommodate over two floors with a large open plan kitchen / living / dining room, separate family room, office, WC and utility at ground floor level and 4 double bedrooms, all ensuite, and a study at first floor level. The development includes a garage and a covered car port which will have direct access to the utility of the house. The proposed house will have a stated floor area of 311.8m². The house will be serviced via a private well and an on-site treatment system.

- 2.4. The Board will note that the applicant submitted unsolicited further information in response to the third-party objection to the application. The solicitors letter outlines the legal right of way the landowner has to the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 9 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening assessment.

The Planning Report concludes that the proposed development is acceptable in terms of principle and no concerns are raised in terms of procedure, policy or visual impacts. The concerns of the Area Engineer in terms of sight distances are noted. The report also considers that the details of the applicant are clear. The issue raised by the third-party with regard to the use of the right of way are not adjudicated upon and Section 34(13) of the Planning Act are cited in this regard.

The initial report concludes that further information is required with regard to the provision of adequate sightlines, permission to alter the existing roadside boundary to facilitate safe access to the site and clarification that the proposed well is located far enough away from the WWTP belonging to the neighbouring property.

Following receipt of the response to the FI request, the final Planning Officers report concludes that the proposed development is acceptable. The Planning Officer recommends that permission be granted for the proposed development and this recommendation formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Area Engineer: The report notes the lack of sight distance due to large trees and vegetation to the east (towards the R600). There is also an ESB pole which will require to be removed. 80m sight distance in each direction is required.

With regard to water services, the report notes no objection subject to compliance with conditions.

Following the submission of the response to the FI request, the AE advises no objections subject to compliance with conditions.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Submissions

There is 1 no. third party objection/submission noted on the planning authority file, which includes 4 parties. The issues raised are summarised as follows:

- The access laneway is not configured, laid out or capable of accommodating additional traffic including construction traffic. The applicant, whoever that might be, has not demonstrated any right to use the laneway.
- Inadequate sight distances available at junction between the local road and the laneway. The development would result in an intensification of use of the driveway and result in a traffic hazard. There are other access options available to the applicant.

- Minutes of pre-planning meeting were not made available to third parties. This has disadvantaged the third parties and it is requested that permission be refused.
- The identity of the applicant is not clearly identified.
- Issues raised with the situation and position of the site notice as it is located approximately 8m from the public road and cannot be read from the public road.
- The information submitted with the application is insufficient to allow assessment of the application. The details submitted are silent on the existence of dykes and watercourses.
- The development will result in a traffic hazard.
- The development will result in an over intensification of use in an unserved area.
- The development conflicts with the CDP requirements and is contrary to the proper planning and sustainable development of the area.

The submission includes a number of enclosures including correspondence between the third party's agent and CCC and a legal opinion, by Mr. David Byrnes Barrister-at-Law, in relation to the use of the laneway. Ultimately, it is Mr. Byrnes opinion that the dominant tenement in the instant case comprises agricultural land. The proposed residential user of the proposed site would fall outside the dominant tenement and would not come under the ancillary doctrine. It is concluded that an intrinsic requirement for the submitted planning application to be valid also requires the consent of the owner of the right of way.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: S/01/5976: Permission sought by Gerard McCarthy for the construction of a dwelling house and domestic garage on the north-eastern area of the landholding site. The application site included the full landholding area, including the current proposed development site.

Permission was granted by Cork County Council subject to 24 conditions including the following:

Condition 5:

One dwelling house only shall be constructed on the entire site shown on the site location map lodged with the Planning Authority on the 1.11.01.

Reason: To ensure that housing density on the site is kept to a level consistent with the amenities of the area.

Condition 6:

Further subdivision of this site shall not take place.

Reason: To control the density of development to a level consistent with the amenities of the area.

PA ref: S/05/1634: Permission sought by Gerard McCarthy for the construction of stables on the northern area of the landholding site. The application site included the full landholding area, including the current proposed development site.

Adjacent Sites:

PA ref: 10/3602: Permission sought for the construction of a two storey dwellinghouse, proprietary sewage treatment and associated site works on the site to the south-west of the current site, accessed via the laneway. Permission was refused for four stated reasons relating to the following issues:

1. Backland development
2. Restricted sight distance at entrance / traffic hazard.
3. Access road serving the site is seriously substandard in width and condition.
4. Highly prominent and obtrusive feature in the landscape.

PA ref: 11/6309: Permission sought again for the construction of a two storey dwellinghouse, proprietary sewage treatment and associated site works on the site to the south-west of the current site, accessed via the laneway. The Planning Officer recommended that permission be refused for two reasons relating to backland development and visual impact. The Director of Services did not accept the recommendation and requested that the applicant be given an opportunity to

address the concerns by way of FI. Following the submission of the response to the FI request, permission was granted subject to 11 conditions.

PA ref: 19/4154: Permission granted for the retention of (a) first floor attic conversion, (b) dormer windows to the northern and western elevations, (c) elevational changes, (d) out-building to eastern elevation, (e) outdoor store with terrace over to southern elevation, all to existing dwelling house located to the north-west of the current proposed site.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.
- 5.1.2. National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, ie. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to 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.

5.2. Sustainable Rural Housing Development Guidelines 2005

- 5.2.1. The Rural Housing Guidelines seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are

consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

- 5.2.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas.

5.3. **Development Plan**

- 5.3.1. The Cork County Development Plan, 2014 is the relevant planning policy document. The subject site is located within the Greater Cork Ring Strategic Planning Area, in an area of Co. Cork which has been identified as being a Rural Area under Strong Urban Influence. In terms of the designations afforded to the subject site, the following policy objectives are considered relevant:

- 5.3.2. RCI 2-2: Rural Generated Housing

- 5.3.3. RCI 4-2: Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1):

The rural areas of the Greater Cork Area (outside Metropolitan Cork) and the Town Greenbelt areas are under significant urban pressure for rural housing. 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.

d) 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.

- 5.3.4. The applicant submits that he works full-time in a home-based business in the rural area and as such, Objective RCI 4-7 is also considered relevant:

RCI 4-7: Full-Time Home-Based Business in a Rural Area

Facilitate the housing needs of persons who can satisfy the Planning Authority of their long-term commitment to operate a “bona fide” full time business from their proposed home in the rural area.

- Applicants must satisfy the Planning Authority that the business will contribute to and enhance the rural community and that the nature of their employment or business is dependent on its location within the rural area.
and
- The applicant must demonstrate their commitment to the proposed business through the submission of a comprehensive and professional Business Plan, and through submission of legal documentation that they have sufficient funding committed to start and operate the business.

The Planning Authority will normally regulate the programme of development, occupancy and use of the fulltime homebased business by either an appropriate planning condition and/or enforceable legal agreement.

5.3.5. In addition, the subject site is located within the Greater Cork Ring Strategic Planning Area. In terms of settlement strategy, the CDP at CS 3-2 deals with the ‘Network of Settlements: Lower Order Settlements’ and identifies that Other Location settlements are to be identified in the Local Area Plans. The CDP provides that it is the strategic aim to ‘recognise other locations, as areas which may not form a significant part of the settlement network, but do perform important functions with regard to tourism, heritage, recreation and other uses’. CS 4-1 deals with the Greater Cork Ring Strategic Planning Area.

5.3.6. Section 4.6 of the Plan deals with General Planning Considerations, where the following policy objectives are considered relevant:

- RCI 6-1: Design and Landscaping of New Dwelling Houses in Rural Areas
- RCI 6-4: Occupancy Conditions

5.4. Natural Heritage Designations

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Cork Harbour SPA (Site Code: 004030) which lies approximately 7.8km to the east of the site. The Sovereign Islands SPA (Site Code: 004124) is located approximately 12.6m to the south of the site.

5.5. EIA Screening

- 5.5.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.
- 5.5.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development comprises the construction of house in rural Co. Cork, on a site of 0.26ha and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.
- 5.5.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.5.1. Having regard to:
- (a) the nature and scale of the development, and
 - (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal, with 4 signatories, against the decision of the Planning Authority to grant planning permission for the proposed development. The appeal document sets out the planning history of the site and the issues raised reflect those raised during the PAs assessment of the proposed development and are summarised as follows:

- The validity of the application is questioned, and the information submitted in support of the application is considered inadequate.
- The assessment of the application is flawed.
- Conditions imposed are inadequate.
- The development will result in both a traffic and safety hazard.
- The development will result in over intensification of use in an unserved area.
- The development is contrary to the proper planning and orderly planning and sustainable development of the area.
- The entitlement for use of the laneway is again raised as an issue and the opinion of Barrister-at-Law Mr. David Byrnes is cited.
- Alternative solutions with regard to access to the site have been presented.
- The planning history of the landholding has not been considered.

There are a number of enclosures with the appeal document, and it is requested that the Board refuse permission for the proposed development.

6.2. First-Party Response to Third-Party Appeal

6.2.1. The applicant has responded to the third-party appeal. The response to the grounds of appeal is summarised as follows:

- Mr. Darragh McCarthy is the applicant and has a genuine housing need. he was raised in his parents' house adjacent to the site and works in the family business which has its offices in the family home.
- The applicant's solicitor outlines his rights for the use of the laneway.
- The use of the laneway to access a second house would not appear to create a safety risk for existing users of the laneway.
- The laneway has been used by construction traffic to construct the existing dwelling house at the end of the laneway in recent years. The applicant will monitor and manage the condition of the laneway as required to ensure no damage to the laneway occurs.
- It is the applicant's preference to utilise the laneway, which negates any impact of the provision of another entrance or laneway in an alternative location as suggested by the appellant.
- The works to the east of the entrance to the laneway will ensure adequate sight distances, which are not currently available to one of the appellants.
- The application was validated on its merits by the PA.

There are a number of enclosures with the response to the third-party appeal, particularly as they relate to the use of the right of way. It is requested that the Board uphold the decision of the PA to grant permission.

6.3. Planning Authority Response

The Planning Authority submitted a response to the third-party appeal noting that the relevant issues have been covered in the technical reports already forwarded to the Board. The PA has no further comments to make.

6.4. Observations

There is one observation noted in relation to the subject case from Mrs. Mary Daly. The observation is prepared on Mrs. Dalys behalf by JMC & Partners, Chartered Engineers. The observation is summarised as follows:

- The planning history of the landholding, recently recovered from the archives as raised issues about the assessment of the application.
- Planning Ref: S/01/5976
 - This permission refers to an application made by Gerard McCarthy for the construction of a dwelling house and domestic garage. The application site included the full landholding at this location (including the current proposed site).
 - The grant of permission was subject to 24 conditions.
 - Condition 5 of said grant of permission states:
“One dwelling house only shall be constructed on the entire site shown on the site location map lodged with the Planning Authority on the 1.11.01.”
To ensure that housing density on the site is kept to a level consistent with the amenities of the area.
 - Condition 6 of said grant of permission states:
“Further subdivision of this site shall not take place.”
To control the density of development to a level consistent with the amenities of the area.
 - The net result of the above conditions is to allow only one house on the overall property.
 - It is noted that the planning history of the property has not been referenced, scrutinised or referenced as part of the assessment.
- Planning Ref: S/05/1634:
 - This application sought permission for the construction of stables within the overall family landholding.
 - The access to the stables is from the north-west of the holding.

- It is requested that the planning history of the landholding be investigated and assessed and that permission for the current proposed development be refused.

7.0 Assessment

7.1.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this retention application and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development & Planning History
2. Roads & Traffic
3. Water Services & Site Suitability Issues
4. Other Issues
5. Appropriate Assessment

7.2. Principle of the Development:

7.2.1. The proposed development seeks to construct a house with services on this rural site within the townland of Collkirky, Riverstick, Co. Cork, approximately 1.3km to the north of Riverstick. I note that this area of the county is identified as a rural area under strong urban influence in the County Development Plan, 2014. The Plan, together with the Sustainable Rural Housing Guidelines, provide clear guidance that there is a presumption against the development of one-off houses except where the proposal constitutes a genuine rural generated housing need based on social and / or economic links to the particular rural area. Should the Board be minded to grant planning permission in this instance it should be satisfied that the appellant adequately complies with the requirements of these stated policies, as well as National Policy Objective 19 of the National Planning Framework.

7.2.2. Objective 19 of the National Planning Framework seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be

based on the core consideration of demonstratable economic or social need to live in a rural area..... having regard to the viability of smaller towns and rural settlements. The applicant is required to accord with one of five categories of rural housing need in accordance with Policy Objective RCI 4-2 of the Cork County Development Plan.

7.2.3. With regard to the above, I would note that it does not appear that the applicant is engaged in farming or other such rural activity and therefore, categories d and e of Policy Objective RCI 4-2 are considered relevant in this instance as follows:

- d) 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.
- e) 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.

7.2.4. In addition to the above, the Board will note that the applicant submits that he works full-time in a home-based business in the rural area and as such, Objective RCI 4-7 is also considered relevant:

RCI 4-7: Full-Time Home-Based Business in a Rural Area

Facilitate the housing needs of persons who can satisfy the Planning Authority of their long-term commitment to operate a “bona fide” full time business from their proposed home in the rural area.

- Applicants must satisfy the Planning Authority that the business will contribute to and enhance the rural community and that the nature of their employment or business is dependent on its location within the rural area.

and
- The applicant must demonstrate their commitment to the proposed business through the submission of a comprehensive and professional Business Plan, and through submission of legal documentation that

they have sufficient funding committed to start and operate the business.

The Planning Authority will normally regulate the programme of development, occupancy and use of the fulltime homebased business by either an appropriate planning condition and/or enforceable legal agreement.

- 7.2.5. In terms of the above policy objectives, I would not consider that the applicant complies with the provisions of Objective RCI 4-7 as the applicant works as a civil engineer in the family business, a construction company, who has its offices within the family home. This is not the applicant's own business in the context of the requirements of the objective and the applicant will not work within the proposed house.
- 7.2.6. With regard to the provisions of Objective RCI 4-2, it would appear that the applicant has lived for a substantial period within the rural area, and immediately adjacent to the subject proposed development site for 19 years. The applicant advises that he currently resides in the family home, located to the north-east of the proposed development site. While I acknowledge and accept the bone fides of the applicant in this instance, and in particular, the need for Mr. McCarthy to reside close to his current place of employment and that his family owns the site, I am satisfied that he does not have a specific need to live on the subject site in the rural area, where his housing need might reasonably be met within the settlement boundary of nearby settlements including Riverstick, approximately 1.3km to the south.
- 7.2.7. As such, I am satisfied that the proposed development does not comply with the policy objectives of the County Development Plan as they relate to rural housing, Objective 19 of the National Planning Framework or the guidance provided within the Sustainable Rural Housing Guidelines.
- 7.2.8. With regard to the issue of planning history, I refer the Board to Section 4.0 of this report. Planning permission was granted to the current applicants' father in 2001 for the construction of a house on the full landholding area, which includes the current proposed development site. The family landholding extends to some 1.97ha and the family home has been constructed on the north-eastern corner of the holding. It has been raised by third parties that conditions attached to the grant of planning permission for the family home, PA ref: S/01/5976 refers, included conditions which

explicitly state that one house only shall be constructed on the entire site and that further sub-division shall not take place. The purpose of these conditions was to control housing density in the rural area. It might therefore be considered that a grant of planning permission in this instance would materially contravene conditions of a previous grant of planning permission pertaining to the site. I would consider this a reasonable conclusion given the location of the site within a rural area under strong urban influence.

- 7.2.9. In terms of the visual impacts arising, I note that the house is set back from the public road and is located in an area which includes established natural roadside boundaries and trees. There are no significant views towards the proposed development site from the local road, although some views will exist from the north east in the vicinity of the Regional Road. I am satisfied that there are no significant visual impacts arising in terms of the proposed development.
- 7.2.10. In addition, I note the separation distances between existing houses in the vicinity. In this regard, I do not consider that any residential amenity impact issues arise.

7.3. Roads & Traffic

- 7.3.1. The proposed development is to be accessed via the local road network in the area, with the final approximately 90m being over a cul-de-sac laneway which currently serves one other house. While the family landholding lies immediately adjacent to the local road, the subject site does not have any frontage onto a public road.
- 7.3.2. The Board will note that the primary issue raised by the third-party appellant relates to the use of the private laneway. It is contended that the applicant does not have the right to use the laneway to service a dwelling. Both parties have submitted legal opinion and documents to support their cases. In respect of legal interest, I am generally satisfied that the applicant has provided adequate information to make the planning application. In terms of the use of the lane, I would refer the Board to Section 34(13) of the Planning and Development Act 2000, as amended which states that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'.
- 7.3.3. In terms of roads and traffic impacts, I note that the Cork County Council Area Engineer raised initial concerns in terms of the lack of sight distance at the junction

of the lane with the public road due to the presence of trees and vegetation to the east (towards the R600). There is also an ESB pole which is noted as requiring to be removed and that 80m sight distance in each direction is required. In response to the request for further information, the applicant submitted proposals to alter the boundary ditch to achieve the sightlines required. I have no objections to the proposed development in terms of roads and traffic.

7.4. Water Services & Site Suitability Issues

- 7.4.1. In terms of site suitability, the Board will note that the proposed house is to be served by a private well and a proposed proprietary treatment system. Having considered the information provided on the planning authority file with regard to the proposed development, it is clear that the sites suitability with regard to the treatment and disposal of wastewater has been considered. In this regard, the applicant submitted a completed site suitability assessment regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site. I also note that the applicant has carried out the assessment on his own behalf, being qualified to do so.
- 7.4.2. The site characterisation assessment, submitted as part of the planning application, notes that no bedrock was identified in the trial pit, which was dug to 2.1m bgl. The water table was noted at this level. The assessment identifies that the site is located in an area where there is no Groundwater Protection Scheme but categorises the site as being a locally important aquifer (LI) with moderate vulnerability. A Groundwater Protection Repose of R1 is indicated. The bedrock type is described as 'ORS, Sandstone, Conglomerate & Mudstone' while the soil and subsoil type is identified as silt/clay and clay.
- 7.4.3. *T tests were carried out on the site at a level of 1.25-1.3m bgl at the base of the hole, yielded a value of 52.42. *P tests were also carried out at a level of 0.4-0.41m bgl, yielding a value of 53.36. The report concludes recommending a packaged wastewater treatment system including an Enviro Bio 6 secondary unit and a Circle 7 advanced tertiary filter. Effluent will flow from the Euro Bio 6 system, with a PE capacity of 6, to the tertiary unit and will discharge to a 300mm deep, gravel distribution bed of 40m². The system will discharge to groundwater with a hydraulic loading rate of 34l/m².

7.4.4. I am satisfied that overall, if permitted, the development is acceptable in terms of site suitability for the treatment and disposal of wastewater arising from the development.

7.5. Other Issues

7.5.1. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

8.0 Appropriate Assessment

8.1. Introduction

8.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Cork Harbour SPA (Site Code: 004030) which lies approximately 7.8km to the east of the site. The Sovereign Islands SPA (Site Code: 004124) is located approximately 12.6m to the south of the site. The development the subject of this retention application and appeal is not directly connected with or necessary to the management of a European site. The applicant did not submit a Natura Impact Statement.

8.1.3. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).

- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

8.1.4. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

8.2. Consultations

8.2.1. With regard to consultations, the Board will note that no issues relating to AA were raised by any party. I also note that the third-party appellant does not raise concerns in terms of AA.

8.3. Screening for Appropriate Assessment

8.3.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application. The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Cork Harbour SPA (Site Code: 004030) which lies approximately 7.8km to the east of the site. The Sovereign Islands SPA (Site Code: 004124) is located approximately 12.6m to the south of the site. The Board will note that the River Stick lies approximately 100m to the east of the subject site (forming the boundary of the wider landholding) and that there is a small land drain which runs within approximately 3m the southern boundary of the site, towards the river.

8.3.2. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 2 Natura 2000 Sites occurring within a 15km radius of the site.

- Cork Harbour SPA (Site Code: 004030) approximately 7.8km to the east of the site.
- The Sovereign Islands SPA (Site Code: 004124) approximately 12.6m to the south of the site.

8.3.3. I am satisfied that the of the above sites, the Cork Harbour SPA can be screened out in the first instance, as although located within the zone of significant impact influence, the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated site to the development site and therefore, I

conclude that no significant impacts on the identified site is reasonably foreseeable. I am satisfied that the potential for impacts on the following Natura 2000 site can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Cork Harbour SPA	004030	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p>Screened Out</p>

8.3.4. Given the proximity of the site to the River Stick, I consider it appropriate to consider the following Natura 2000 site as being within the zone of influence of the proposed development, for the purposes of AA Screening:

- The Sovereign Islands SPA (Site Code: 004124).

8.4. Qualifying Interests for Natura 2000 Sites within Zone of Influence

8.4.1. The subject development site located within a rural environment and there is a small drain which runs approximately 3m to the south of the site, connecting with the River Stick approximately 100m to the east. There is a potential pathway to the Irish Sea, via Kinsale, and to the Sovereign Islands SPA, via the River Stick. The appeal site is not located within any designated site and does not appear to contain any of the habitats or species associated with any Natura 2000 site.

8.4.2. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
<p>Sovereign Islands SPA (Site Code: 004124)</p> <p>Located approx. 12.6km to the South of the site</p>	<ul style="list-style-type: none"> • Cormorant (<i>Phalacrocorax carbo</i>) [A017]

Sovereign Islands SPA (Site Code: 004124)

- 8.4.3. The Sovereign Islands are two very small marine islands located approximately 1 km off the coastline at the entrance to Oysterhaven Bay in Co. Cork. The islands are rocky stacks separated by a narrow sound of about 20 m width. The eastern island is flat-topped and rises to 24 m above sea level and the western one is more peaked and rises to 30 m. Both islands are largely devoid of soil apart from small amounts of organic matter trapped in cracks. Vegetation is sparse.
- 8.4.4. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the Cormorant. The islands are important for breeding seabirds, with most occurring on the eastern stack. A Cormorant colony has been known since the late 1960s and 156 pairs were recorded here in 1999. A more recent survey in 2008 recorded 89 pairs. Herring Gull and Great Black-backed Gull also breed, with 10 and 75 pairs respectively in 1999.
- 8.4.5. Sovereign Islands SPA is of ornithological importance mainly for the breeding colony of Cormorant, which is both the largest in Co. Cork and of national importance. The non-migratory population of Great Black-backed Gull is also of national importance.

8.5. Conservation Objectives:

- 8.5.1. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
Sovereign Islands SPA (Site Code: 004124) Located approx. 12.6km to the South of the site	The NPWS has identified the following generic objective for the site: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA

8.6. Potential Significant Effects

- 8.6.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 site, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no

direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 12.6km from the boundary of the designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a rural environment. No qualifying species or habitats of interest, for which the designated site is so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.
- **Water Quality:** The proposed development relates to the construction of a two-storey house on a rural site. The development includes a proposal to a proprietary wastewater treatment system to serve the house. Having regard to the nominal scale of the proposed development, together with the separation distances between the site and the boundary of the SPA, I am generally satisfied that the development, if permitted, is unlikely to impact on the overall water quality of the Sovereign Islands SPA (Site Code: 004124).

I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Sovereign Islands SPA can be excluded given the distance to the sites, the nature and scale of the development and the lack of a hydrological connection.

8.7. In Combination / Cumulative Effects

- 8.7.1. Given the nature of the proposed development, being the construction of a house, I consider that any potential for in-combination effects on water quality in the River Stick and ultimately the Sovereign Islands SPA can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in

the Sovereign Islands SPA via rivers and other surface water features are also subject to AA.

8.8. Conclusion on Stage 1 Screening:

- 8.8.1. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

9.0 Recommendation

- 9.1.1. Having regard to the information submitted in support of the appeal and development the subject of the appeal, together with all other matters and details on the file, I am not satisfied that the principle of the development is acceptable in the context of national policy as it relates to rural housing. As such, I recommend that permission be refused for the development for the following reasons.

10.0 Reasons and Considerations

1. The site is located in a "Rural Area under Strong Urban Influence" in the current County Cork Development Plan and in the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005. It is an objective of the planning authority, as expressed in the current Development Plan, to channel housing into serviced centres and to restrict housing development in rural areas under significant urban pressure to those people who can demonstrate a genuine need to live in the countryside. This objective is considered reasonable. The Board is not satisfied, on the basis of the

submissions made in connection with the planning application and the appeal, that the applicant has demonstrated that she comes within the scope of the housing need criteria in the Development Plan.

2. Having regard to the pattern of development in the immediate vicinity, the proximity of the site to the key village of Riverstick and to the location of the proposed site in an area under strong urban pressure, it is considered that the proposed development would exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing in an unzoned rural area and would lead to an erosion of the rural and landscape character of this area. Furthermore, having regard to the nature of the proposed development, it is considered that it would lead to increased demands for the uneconomic provision of public services and facilities, where these are neither available nor proposed in the said Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. A grant of planning permission would contravene conditions 5 and 6 of a previous grant of permission on the wider landholding, PA ref: S/01/5976 refers, which explicitly state that one house only shall be constructed on the entire site and that further sub-division shall not take place, in order to control the density of development to a level consistent with the amenities of the area. A grant of permission in this instance would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

26/02/2022