



An
Bord
Pleanála

Inspector's Report ABP-313432-22

Development	Construction of a house, on-site wastewater treatment system, entrance, and all associated site works.
Location	Rostellan, Midleton, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	217499
Applicant(s)	Kate Ring
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Janet McSwiney
Date of Site Inspection	28 th July 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area approximately 5.7km to the south of Midleton, Co. Cork. It is accessed from a county road (L7660), immediately to the west of the junction (Whitewell Cross) of the R630 and R631 regional roads. This local road is narrow but is wide enough to facilitate passing cars. There is a house and associated farm buildings immediately adjacent to the east of the appeal site. There is also a farmyard on the opposite/northern side of the local road.
- 1.2. The appeal site is stated to be 0.495 ha. in area. The site has an access only from the local road. This access runs along the western side of the neighbouring house and farmyard. The site also occupies an area of road frontage which extends to approximately 70m along its eastern boundary with the R630 regional road. There is a low hedgerow along this eastern roadside boundary. The northern site boundary, shared with the adjoining house and farmyard, is comprised of tall conifer trees. The southern and western boundaries are open to the agricultural field from which the site is to be annexed. The appeal site falls steadily from north to south. The site is presently under grassland and in agricultural use.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a house, a new entrance to the site, the installation of a domestic wastewater treatment system (DWWTS), a connection to the public water supply and associated site development works at Rostellan, Midleton, County Cork.
- 2.2. The proposed dwelling is single storey in design with a maximum ridge height of 5.63m, with render finish, some natural stone cladding and blue / black slates. The proposed dwelling will have an area of 183.1m². The eastern site boundary is to be retained and screen planting is proposed along the southern, northern and western site boundaries, although details of this planting is not specified.

3.0 Planning Authority Decision

3.1. Request for further information

- 3.1.1. Prior to its notification of decision, the Planning Authority issued a further information request on 24th February 2022 requiring details of the location of the original family home, clarification of the applicant's present address, evidence of residing in the rural area for greater than 7 years, and clarification if there is other family land in the area.
- 3.1.2. In response, the first party submitted a map indicating the location of her family home and present residence, confirmation that another residence is part-owned with a family member and is rented accommodation, evidence of residency and confirmation that there is no other land in the area owned by her immediate family. The first party submitted copies of payslips from 2014-2022 and correspondence from her father's medical consultant as evidence of her need for a house at this location.

3.2. Decision

By order dated 31st March 2022 Cork County Council issued a notification of decision to Grant Permission for the proposed development subject to 15 no. conditions. Of note are the following conditions:

Condition No.2: Requiring a 7 year occupancy agreement.

Condition No.15: Landscaping scheme in accordance with details submitted on 23rd December 2021.

3.3. Planning Authority Reports

3.3.1. Planning Reports

- 3.3.2. The initial report of the Planning Officer dated 23rd February 2022 outlines the relevant planning policy under the Cork County Development Plan 2014, outlines the relevant planning history and notes the objection received. Further information was recommended requiring details of the location of the original family home,

clarification of the applicant's present address, evidence of residing in the rural area for greater than 7 years, and clarification if there is other family land in the area.

Appropriate Assessment Screening was carried out and concluded that there was no likely potential for significant effects to any Natura 2000 site.

A second report, subsequent to the submission of a response to further information, recommends a grant of permission consistent with the notification of decision which issued.

3.3.3. **Other Technical Reports**

Area Engineer: No objection. Conditions recommended.

3.4. **Prescribed Bodies**

Irish Water: No objection. Conditions recommended.

3.5. **Third Party Observations**

A submission was received from Janet McSwiney, Derrynane, Youghal Road, Midleton, Co. Cork. The issues raised are generally similar to those referenced in the grounds of appeal. These include concerns regarding backland development, overlooking, and overshadowing.

4.0 **Planning History**

4.1. **Adjacent sites:**

P.A. ref. no. 20/5819: Permission for a storey and a half house for Kate Ring refused for the following reason:

It is an objective as set out under GI 6-1 of the current County Development Plan 2014 to protect the scenic and visual amenities of Cork's natural landscape. Having regard to the prominent and highly visible location of the site on an exposed ridgeline, in an area of high landscape value in close proximity to a scenic route, the proposed development would interfere with the visual and scenic amenities of the area and with the character of the landscape and thus contravene objective GI 6-1. In addition, the proposed development would exacerbate ribbon development on this

road contrary to the objectives and policies of the County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

P.A. ref. no. 20/5924: Permission for a storey and a half house for Lisa Ring refused for the same reason as above.

P.A. ref. no. 21/7414: Permission granted to Lisa Ring for single storey house.

P.A. ref. no. 20/4543: Permission granted to Janet McSwiney to demolish a single storey house and to construct a part single storey, part two-storey house immediately to the north of the appeal site.

5.0 Policy Context

5.1. National Planning Framework

5.1.1. The NPF in relation to rural housing includes objective 19 which states –

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements; and
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

5.2.1. The Sustainable Rural Housing Guidelines require planning authorities to differentiate between rural housing demand arising from rural housing need and housing demand arising from proximity to cities and towns. Additionally,

development plans should distinguish rural areas under strong urban influence, stronger rural areas, structurally weak rural areas and areas with clustered settlement patterns. The guidelines state that development management policy should be tailored to manage housing demand appropriately within these areas.

5.3. **Cork County Development Plan 2022-2028**

The Board should note that the Planning Authority carried out their assessment of the proposed development based on the policies and objectives contained in the Cork County Development Plan 2014. The Cork County Development Plan 2022-2028 came into effect on 6th June 2022.

5.3.1. The appeal site is located in an area designated as a **'Rural Area under Strong Urban Influence'**. The Plan states:

“The rural areas of the Greater Cork Ring Area outside the Metropolitan Greenbelt are now within easy commuting distance of Cork City as a result of road and infrastructural improvements. These areas exhibit characteristics such as rapidly rising population, evidence of considerable pressure from the development of (urban generated) housing in the open countryside due to proximity to such urban areas / major transport corridors, pressures on infrastructure such as the local road network and higher levels of environmental and landscape sensitivity.”

Objective RP 5-4: 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.
- (b) Persons taking over the ownership and running of a farm on a full-time basis (or part – time basis where it can be demonstrated that it is the predominant

occupation), 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) Other persons working full-time in farming (or part – time basis where it can be demonstrated that it is the predominant occupation), forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- (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. It is not necessary for the applicant to show that they have already returned to Cork, provided they can show that they genuinely intend taking up permanent residence.

5.4. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is Cork Harbour SPA (Site Code: 004030) which is located approximately 600m to the southwest of the appeal site. Great Island Channel SAC (Site Code: 001058) is located approximately 3.3km to the north of the site.

5.5. EIA Screening

Having regard to the nature and scale of the proposed development and separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are submitted by Janet McSwiney, Derrynane, Youghal Road, Midleton, Co. Cork (permitted a replacement house immediately to the north of the appeal site (P.A. ref. no. 20/4543 refers). The main points made can be summarised as follows:

- Contends that the application amounts to backland development and is out of character with the area.
- Concerned that the site is highly prominent when viewed from the R631 regional road.
- Contends that the proposed development would significantly overlook the rear garden of her proposed dwelling and that this will impact on her privacy.
- Contends that the proposed house and associated planting will reduce sun / light from her property.
- Cites another application (P.A. ref. no. 20/5924 refers) in the area that have been refused for these reasons.

6.2. Applicant Response

None.

6.3. Planning Authority Response

The planning authority states that all the relevant issues have been covered in the technical reports and has no further comments to make.

7.0 Assessment

I consider that the main issues in the assessment of this appeal are as follows:

- Rural Housing Policy
- Visual Impact
- Residential Amenity
- Other Issue
- Appropriate Assessment

7.1. Rural Housing Policy

- 7.1.1. National guidance as set out in the National Planning Framework and in the Sustainable Rural Housing Guidelines emphasise the need to distinguish between areas that are under urban influence or pressure and other rural areas and in addition, to differentiate between urban and rural generated housing need.
- 7.1.2. The designation 'Rural Areas under Urban Influence' as set out in the current Cork County Development Plan is described as one where 'evidence of considerable pressure from the development of (urban generated) housing in the open countryside due to proximity to such urban areas / major transport corridors, pressures on infrastructure such as the local road network and higher levels of environmental and landscape sensitivity'. **Objective RP 5-4** seeks to facilitate the provision of dwellings for persons who have 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 the categories of housing need outlined in 5.3.1 above.
- 7.1.3. The First Party submitted a Supplementary Form outlining her connection to this local rural area. The First Party provided details of the location of her family home approximately 500m to the west of the appeal site, stated that she attended Saleen National School (1996-2004) and Whitegate National School (2004-2006), stated that she is a nurse in Cork University Hospital and a farmer at this location, and included details of her farming activities on this landholding since its stated purchase by her mother in 2018 (copies of FETAC Level 5 and 6 certificates are included).

- 7.1.4. As a response to the RFI, the First Party submitted copies of payslips from Cork University Hospital as evidence of her address at this rural location from 2014 to 2022. The First Party also submitted a copy of a letter from her father's medical consultant outlining the requirement for her to provide care and support to her parents.
- 7.1.5. In terms of Objective RP 5-4 and the requirements of the rural housing policy, the application can be summarised as follows:
- a) The application is not being made by a farmer, or their son / daughter who is seeking to build their first home for permanent occupation on the family farm.
 - b) The applicant is not taking over the running of farm on a full-time basis as her main employment is as a nurse in Cork University Hospital in Cork City.
 - c) The applicant has not provided information of working in other essential rural activities.
 - d) On the basis of the information provided, I consider that the First Party has demonstrated that she has spent a substantial period of their life (over 7 years) in this rural area. However, it is not clear whether the First Party is seeking to build her first home for her permanent occupation in the local rural area. The First Party has confirmed that she part-owns another dwelling with a family member, but no details have been submitted with the application or appeal identifying the location of this dwelling. Therefore, I consider that it has not been sufficiently demonstrated that the First Party has a housing need in this local rural area as this need may have already been met.
 - e) The applicant is not a returning emigrant.
- 7.1.6. Therefore, I am not satisfied that the information provided forms a clear basis for compliance with rural housing policy set out in the development plan and, consequently, forms a basis for a need to live at this rural location in accordance with the policy set out in the County Development Plan. The applicant's housing needs could clearly be met within Cork City or alternatively within another town or settlement in the vicinity of the appeal site.
- 7.1.7. On the basis of the above, I do not consider that the applicant meets the requirements of the Cork County Development Plan relating to rural housing in an

area designated as 'Rural Area under Urban Influence' such as the appeal site. I also consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines. The applicant has not, therefore, demonstrated that she can meet the requirements of the settlement policy as set out in Objective RP 5-4.

7.2. Visual Impact

- 7.2.1. As stated earlier in this report, the proposed dwelling is single storey in design with a maximum ridge height of 5.63m, with render finish, some natural stone cladding and blue / black slates. The proposed dwelling will have an area of 183.1m². The eastern site boundary is to be retained and screen planting is proposed along the southern northern and western site boundaries, although details of this planting is not specified.
- 7.2.2. I note the concerns of the third party that the site is highly prominent when viewed from the R631 regional road. On the day of my site inspection, I observed the appeal site from this regional road and noted that the proposed house would not be visible to passing traffic when travelling south along this road. I confirm that the proposed house would be visible on the appeal site when travelling in a northerly direction on the regional road. There are a number of aspects that need to be considered in relation to this namely, the setting of the appeal site and proposed development, and the previous refusals of permissions issued to the First Party and her sister on the adjacent sites to the west.
- 7.2.3. In order to overcome/address the previous reason for refusal on the adjacent site (P.A. ref. no. 20/5819 refers), the First Party has attempted to minimise the visual impact of a house at this location by reducing the height of the proposed house and by moving the site to southeast on the landholding and lowering the level at which is proposed to be constructed. I consider that both of these changes would significantly reduce the visual impact of a house at this location.
- 7.2.4. In relation to the setting, I acknowledge the visibility of the proposed house from the regional road to the east of the appeal site, but I consider that the combination of an existing backdrop of mature trees on the northern site boundary with screen planting along the new southern site boundary would mitigate against any significant adverse

visual impact. The First Party submitted photomontages with her application to the Planning Authority and I am satisfied that these represent an accurate presentation of how the proposed house would sit on the appeal site post development.

- 7.2.5. In conclusion, I consider that the proposed house design, which is modest in scale, traditional in form and design, would not form an incongruous feature on this rural landscape and, with the retention of the eastern site boundary and some additional planting, should sit comfortably on the appeal site. I, therefore, am satisfied that the proposed house would not have any significant adverse visual impact on this rural landscape.

7.3. Residential Amenity

Backland development

- 7.3.1. The third party contends that the application amounts to backland development and is out of character with the area. I note the comments of the Planning Officer in relation to the absence of backland policy in the Cork County Development Plan 2014 and I confirm that, similarly, there is no policy in relation to backland development in the current plan.
- 7.3.2. Given the extent of road frontage along the R631 regional road, I am satisfied that the appeal site can be considered more linear in nature, and I agree with the Planning Officer's contention that the proposed development would result in a type of consolidated development around a rural crossroads.

Overlooking

- 7.3.3. The third party contends that the proposed development would significantly overlook the rear garden of her proposed dwelling and that this will impact on her privacy. I note that the proposed single house is to be setback approximately 27m from the appellant's boundary and the finished floor level of the proposed house will be at least 1.5m lower than the appellant's site. There are five ground floor windows proposed on the northern elevation of the proposed house within a study, lobby, WC, utility room and living area. Given the function and modest size of these windows, the separation distance from the shared boundary and the lower finished floor level of the proposed house, I am satisfied that the proposed development would not give rise to overlooking of the appellant's property.

Overshadowing

7.3.4. The third party contends that the proposed house and associated planting will reduce sun / daylight from her property. Although there is screen planting indicated on the site layout plan, the type of planting is not specified. Notwithstanding this, I consider that, given the extent and aspect of the appellant's rear garden, to the north of the appeal site, and the modest scale and low-lying nature of the proposed house relative to the adjacent house, that there is limited potential for significant loss of daylight to occur to this property. I am satisfied that the private open space associated with the appellant's property will receive well in excess of two hours direct sunlight specified in the BRE Guidance¹. I am, therefore, satisfied that the proposed development would cause no significant adverse impacts on the residential amenities of the appellant's property or other neighbouring properties.

7.4. **Other Issue**

Groundwater

7.4.1. The First Party proposes to treat the wastewater by means of a secondary treatment system and discharge to a percolation area. On the day of my site inspection, I noted that the ground conditions were good and, in my opinion, consistent with those described within the Site Characterisation Form. I am satisfied that the proposals for the treatment and disposal of wastewater conform with the EPA guidance issued under the 2021 Code of Practice. I conclude, based on the material submitted with the application and my observations, that the appeal site is suitable for the safe disposal of domestic effluent and with the installation of a proprietary wastewater treatment system, that the proposed development would not create a serious risk of ground water pollution.

7.5. **Appropriate Assessment**

Having regard to the nature and scale of the development proposed and the absence of any direct or indirect pathway between the appeal site and any European site and the separation distances to the nearest European sites (Great Island

¹ P.18, Site Layout Planning for Daylight and Sunlight – a guide to good practice, P. Littlefair

Channel SAC (site code: 001058) and Cork Harbour SPA (site code: 004030)), no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that permission be refused for the reason stated below.

9.0 Reasons and Considerations

Having regard to:

- The location of the site within a rural area identified as being a 'Rural Area under Urban Influence' in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005 and under the Cork County Development Plan 2022-2028,
- National Policy Objective 19 of the National Planning Framework (February 2018) which seeks 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, having regard to the viability of smaller towns and rural settlements,
- The provisions of the Cork County Development Plan 2022-2028 and specifically Objective RP 5-4, which facilitates the provision of rural housing for local rural people building in their local rural area, and
- The applicant's place of employment in Cork City, and the absence of documentary evidence on the file outlining the location of the applicant's existing dwelling and need to live in this rural area,

the Board could not be satisfied on the basis of the information on the file that the applicant comes within the scope of either economic or social housing need criteria

as set out in the overarching National Guidelines or the definition of a local rural person in accordance with the relevant criteria of the development plan.

The proposed development, in the absence of any identified locally based need for a house at this location, would result in a haphazard and unsustainable form of development in an unserved area, 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 undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

26th September 2022