



An
Bord
Pleanála

Inspector's Report

ABP-313617-22

Development	Erection of dwelling house and associated site development works
Location	Kilcoe, Ballydehob, Co. Cork,
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	21805
Applicant(s)	Robert & Isabelle Barbosa Moylan
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Timothy McGrath
Date of Site Inspection	6 th October 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located on elevated land that is overlooking Roaringwater Bay approximately 3.8km to the southeast of the town of Ballydehob in West Cork. The area and surrounding countryside are dominated by one-off dwelling houses set within their own grounds. The site is presently partly under grass, with a hardstanding area accommodating a tennis court, associated c.2m high fencing and a small storage shed. Immediately to the south of the site is a house (indicated as the family home) of the First Party. The site is accessed via a private laneway from the public road to the north. This laneway runs for approximately 150m to the access of the appeal site and continues to the house to the south. The appeal site is accessed directly off this laneway.
- 1.2. The site itself is of irregular shape, slopes upwards from its southern corner (36.95m OD) to its northern boundary (c.41.5m OD) and it has a stated area of 0.75 hectares. The site boundaries are open on the southern, northern and western sides and a low hedgerow/scrub area runs along the eastern portion of the appeal site and its boundary.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached dwelling house with an on-site wastewater treatment system on the site at Kilcoe, Ballydehob, Co. Cork.
- 2.2. The proposed house is dormer in design with traditional features. The proposed house has a floor area of 203m² and a ridge height of 6.309m, with render finish and black slates / tiles. The house would be served by a private water supply and an on-site wastewater treatment system.
- 2.3. Access to the appeal site is via the existing entrance and laneway serving the adjoining house.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to notification of decision, the Planning Authority issued a further information request on 19th January 2022 requiring a revised site suitability assessment with cross sections showing the soil polishing filter and the base of the nearby valley. The First Party submitted revised drawings showing a cross section of the soil polishing filter.

3.2. Decision

- 3.2.1. By order dated 3rd May 2022 Cork County Council issued a notification of decision to Grant Permission for the proposed development subject to 12 no. conditions. Of note is the following condition:

Condition No.2: Requirement to enter an occupancy agreement for seven years.

3.3. Planning Authority Reports

3.3.1. Planning Reports

There are two Planning Reports on file dated 19th January 2022 and 29th April 2022, respectively. The Planning Officer in the initial report outlined the relevant policies (Tourism and Rural Diversification Area) under the Cork County Development Plan 2014. The principle of a dwelling house was deemed acceptable that the applicant met the requirements of the rural housing policy, and the third party submissions and the internal report were noted. The report recommended further information be requested regarding a revised site suitability assessment with cross sections showing the soil polishing filter and the base of the nearby valley.

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

A second Planner's Report (dated 29th April 2022) refers to the further information submitted and considered that, having regard to the additional information, permission should be granted subject to 12 No. conditions.

3.3.2. Other Technical Reports

Area Engineer: The initial report dated 18th January 2022 sought further details in relation to the disposal of wastewater. The second report dated 28th April 2022 confirmed that there was no objection to the proposed development. Conditions recommended.

3.4. Prescribed Bodies

Irish Water: No objection. Conditions recommended.

3.5. Third Party Observations

Two submission was received from Timothy McGrath, Kilcoe, Skibbereen, Co. Cork and Mark & Helen Lynch, Mounthovel, Rochestown, Cork. The issues raised are generally similar to those referenced in the grounds of appeal. These concerns include the applicant's need to build a house on this part of the landholding, visual amenity, inadequate road infrastructure providing access to the site, the planning history on the site and queries the applicants' intention to run the farm.

4.0 Planning History

4.1. Appeal site:

P.A. Ref. No. 08/723: Permission refused for a short-term letting house.

P.A. Ref. No. 08/1210: Permission granted for a loose sheep house.

5.0 Policy Context

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

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 Development Guidelines 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

I draw the Board's attention to the adoption of the Cork County Development Plan on 25th April 2022, which came into effect as the statutory plan for the county on 6th June 2022. The decision of the Planning Authority was made under the previous County Development Plan.

5.3.1. The appeal site is located within an area with a Rural Housing Policy Area Type designation of '**Tourism and Rural Diversification Area**'. These parts of rural and coastal County Cork exhibit characteristics such as evidence of considerable pressure for rural housing, in particular higher demand for holiday and second home development. These rural areas are more distant from the major urban areas and the associated pressure from urban generated housing. These areas also have higher housing vacancy rates and evidence of a relatively stable population compared to weaker parts of the County. These areas have higher levels of environmental and landscape sensitivity and a weaker economic structure with significant opportunities for tourism and rural diversification.

Objective RP 5-5: Tourism and Rural Diversification Area

This rural area has experienced high housing construction rates and above average housing vacancy rates which has led to concerns that a higher demand for holiday and second homes is depriving genuine rural communities the opportunity to meet their own rural generated housing needs. Therefore, in order to make provision for the genuine rural generated housing needs of persons from the local community based on their social and / or economic links to a particular local rural area and to recognise the significant opportunities for tourism and rural diversification that exist in this rural area, it is an objective that applicants must demonstrate that their proposal complies 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) 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. 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.

5.3.2. The appeal site is located within an area of West Cork designated as a '**High Value Landscape**'.

Objective GI 14-9: Landscape

- a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- b) Landscape issues will be an important factor in all land-use proposals, ensuring that a pro-active view of development is undertaken while protecting the environment and heritage generally in line with the principle of sustainability.
- c) Ensure that new development meets high standards of siting and design.
- d) Protect skylines and ridgelines from development.

- e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

5.3.3. The appeal site is also located off a county road designated as a scenic route (**S.91 – Roads near Bealaclara Bridge**).

5.3.4. **Groundwater Protection**

Objective WM 11-5: Discharges in Unsewered Areas

- a) Ensure that proposals for development incorporating on-site wastewater disposal systems comply with the EPA Code of Practice Domestic Waste Water Treatment Systems March 2021 (Population Equivalent ≤ 10) and Wastewater Treatment Manual - Treatment Systems for Small Communities, Business Centres, Leisure Centres and Hotels (1999), or relevant successor approved standards / guidelines (including design, installation and maintenance). The cumulative impact of such systems will also be considered in the assessment process.
- b) Continue to support the roll out of the National Inspection Plan 2018–21 for domestic waste-water treatment systems, and any successor plans, with prioritisation of Blue Dot Catchments and Protected Areas.
- c) Protect the County's waters from wastewater pollution, through the implementation of the Local Government (Water Pollution) Acts 1977 to 2007, ensuring that all development shall comply with the provisions where applicable.

5.4. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is Roaringwater Bay and Islands SAC (Site Code: 000101) which is located approximately 10m to the north and 300m to the south of the appeal 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 Timothy McGrath, Kilcoe, Skibbereen, Co. Cork, P81 WY91. The main points made can be summarised as follows:

- Contends that the applicant grew up, was educated, and worked in or near Cork city.
- Contends that the existing house at Kilcoe is a second home and not permanently occupied.
- Queries the housing need as not typical of a 'classic' family farm scenario where a farmer would be living permanently on the farm and working full-time on the farm.
- Concerned that applicants may be able to sell the house if their work arrangements change.
- Seeks clarity regarding condition 5 regarding the entrance and expresses concern that it may require the removal of well-established deciduous trees.
- Contends that the siting of the proposed house in a prominent location on the holding would detract from the landscape in the coastal area.
- Contends that, if 'local need' is satisfied, there are more suitable sites available on part of the holding located near Schull.

6.2. Applicant Response

6.2.1. The main issues raised in the First Party response to the grounds of appeal can be summarised as follows:

- Contends that Robert Moylan clearly fulfils the requirements for category "(a) Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm" and category "(d) Persons who have spent a substantial period of the lives (i.e., over seven years)..." under Development Plan policy.

- Submits evidence of the applicant's fathers farming activities on the landholding from 2012 to 2022.
- States that the site was selected following pre-planning advice and confirm willingness to make slight amendments to the layout in order to reduce visual impacts.
- Confirm that it is proposed to use the existing site entrance and carry out improvements to the western roadside boundary.

The First Parties included a letter with the appeal response outlining their circumstances.

6.3. Planning Authority Response

The Planning Authority has not responded to the grounds of the appeal.

7.0 Assessment

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

- Rural Housing Policy
- Design and Visual Impact
- Other Issue
- Appropriate Assessment

7.1. Rural Housing Policy

- 7.1.1. The key issue to be addressed within this appeal relates to the question of whether the applicants have an economic or social need to live in this rural area that meets the requirements of the rural housing policy. As part of the application to the Planning Authority, the First Party set out the justification for providing a house at this location on the basis of a social and economic need to locate on the family farm. In response to the appeal, the First Party reiterates how he complies with rural housing policy.
- 7.1.2. The site is located in an area identified in the Cork County Development Plan 2022-2028 as a 'Tourism and Rural Diversification Area' and a 'Stronger Rural Area' as identified in the Sustainable Rural Housing Guidelines. In these areas population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas.¹
- 7.1.3. The Sustainable Rural Housing Guidelines for Planning Authorities (2005) state that development driven by urban areas should take place within the built-up areas, and that a distinction should be drawn between development that is needed to sustain rural communities and that which tends to take place in the environs of towns, which should more appropriately take place within urban areas.

¹ P.16, Sustainable Rural Housing – Guidelines for Planning Authorities (DoEHLG 2005)

- 7.1.4. The policies set out in the Sustainable Rural Housing Guidelines have been reinforced in the more recently published National Planning Framework (2018). In areas under strong urban influence, it is the policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic and social need to live in a rural area, having regard to the viability of small towns and rural settings. Thus, it continues to be necessary to demonstrate a functional economic or social requirement for housing need in these areas.
- 7.1.5. In this regard, the First Party is attempting to demonstrate compliance with Objective RP 5-5: Tourism and Rural Diversification Area and that their proposal constitutes a genuine rural generated housing need based on their social and / or economic links to the local rural area, and the following category of housing need:
- “Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm.”
- 7.1.6. Under this appeal, the First Party has stated that his father purchased 18 acres at Kilcoe in 1993. The First Party also states that he completed his secondary school education in Presentation Brothers in Cork in 2005 and that he spent 4 to 6 months per year from 1994 to 2018 at Kilcoe. Effectively, the First Party appears to have spent his school holidays at this location and resided in/near Cork city for the remainder of the year. However, no documentary evidence supporting this statement has been submitted. The First Party has submitted evidence of his father’s farming activities from 2012 to 2022.
- 7.1.7. In terms of Objective RP5-5 and the requirements of the rural housing policy, the application can be summarised as follows:
- a) The First Parties are not farmers as they have stated that they work in IT and healthcare on a full-time basis. The First Party has stated that he is the son of a farmer and has submitted evidence of his father’s farming activities. The First Party has also stated that he is taking over the running of the farm, but no documentary evidence supporting this statement has been submitted. On this basis, I am not satisfied that the applicants have demonstrated a genuine rural generated housing need in accordance with the requirement of the policy contained in the County Development Plan.

- b) The First Party has not provided documentary evidence that he is taking over the ownership and running of a farm on a full-time basis.
- c) The First Party is not 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.
- d) On the basis of the information provided, I consider that the First Party has not demonstrated that he has spent a substantial period of his life living in the local rural area.
- e) The applicants' predominant occupations is not farming / natural resource related.
- f) The applicants are not involved in permanent employment that is essential to the delivery of social and community services and intrinsically linked to this rural area.
- g) The applicants are not returning emigrants.

7.1.8. Therefore, on the basis of the information available, I am not satisfied that the information provided forms a clear basis for compliance with rural housing policy set out in the development plan or forms a basis for a need to live at this rural location. On the basis of the above, I do not consider that the applicants meet the requirements of the Cork County Development Plan relating to rural housing in an area designated a 'Tourism and Rural Diversification Area' such as the appeal site. Given the location of the appeal site in an area also designated as a 'Stronger Rural Area' and the circumstances of the applicants, I also consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines.

7.2. Design and Visual Impact

7.2.1. The proposed development is located within a coastal highly scenic area designated as a 'High Value Landscape' and Scenic Route 91 in the Cork County Development Plan 2022-2028. The policy objective GI 14-9 of the Planning Authority, as set out in the Plan, seeks to prevent inappropriate new dwelling houses unless there is an acknowledged local rural generated housing need.

- 7.2.2. The Third Party contends that the siting of the proposed house in a prominent location on the holding would detract from the landscape in the coastal area and contends that there would be more suitable, less obtrusive sites on the part of the landholding located near Schull. The First Party contends that the house plans are entirely suitable to rural Cork and confirms a willingness to make slight amendments to the layout in order to reduce visual impacts.
- 7.2.3. I consider that, on a stand-alone basis, the proposed house design is reflective of a traditional rural house that is suitable to this area of West Cork. However, policy objective GI 14-9 is clear and seeks to prevent inappropriate new dwelling houses unless there is an acknowledged local rural generated housing need. As outlined under section 7.1 of this report, I am not satisfied that the First Party has demonstrated a genuine need for a house at this rural location in accordance with the requirements of the County Development Plan.
- 7.2.4. Furthermore, the First Party proposes to site the house at the highest point on this part of the holding. There is no detailed site analysis or design statement included with the appeal / application outlining the reasoning for this. There may be a practical reason for this associated with the requirement for separation distances on the site, but I consider it is, more likely, to avail of the views of Roaringwater Bay to the south of the appeal site. Notwithstanding the minor amendments to the layout suggested by the First Party, I consider that the proposed house would be visually prominent in this coastal area and adjacent to a designated scenic route.
- 7.2.5. I also note the works proposed at the existing entrance to the holding and the Third Party concerns in this regard. From a traffic safety perspective, I consider that the existing access to the public road is safe and, given the operating speed of this rural road, I consider it unnecessary to interfere with the roadside boundary to the west to improve sightlines. On the day of my inspection, I observed the existing sightlines at this location, and consider these to be adequate. I therefore consider it preferable that no works are carried out on this boundary in the interests of visual amenity on this designated scenic route.
- 7.2.6. Given that the appeal site is located within an area of West Cork with a designation of a 'High Value Landscape', where it is an objective (GI 14-9) of the plan to protect the visual and scenic amenities of County Cork's built and natural environment and

to protect skylines and ridgelines from development, I consider that the proposed development does not constitute an exception to the restriction on new houses within this 'High Value Landscape' and would, therefore, detract to an undue degree from the rural character and scenic amenities of the area and would constitute an undesirable precedent for development of this nature in a scenic, sensitive rural landscape.

7.3. **Other Issue**

Disposal of Wastewater

- 7.3.1. 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.

7.4. **Appropriate Assessment**

- 7.4.1. 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 site (Roaringwater Bay and Islands SAC (Site Code: 000101) which is located approximately 300m to the south of the site), 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 reasons stated below.

9.0 Reasons and Considerations

1. Having regard to:

- The location of the site within a rural area identified as being an area under strong 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 'Tourism and Rural Diversification Area' 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 5-5, which facilitates the provision of rural housing for local rural people building in their local rural area, and
- The absence of documentary evidence on the file outlining the applicant's need to live in this rural area,

the Board could not be satisfied on the basis of the information on the file that the applicants come 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 unserviced 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.

2. The site is designated as 'High Value Landscape' under the provisions of the Cork County Development Plan 2022-2028 where it is an objective (GI 14-9) of the plan to protect the visual and scenic amenities of County Cork's built and natural environment and to protect skylines and ridgelines from development. This designation and policy are considered reasonable. Having regard to the design and siting of the proposed development in an elevated location and close to a designated scenic route, it is considered that the proposed development would detract to an undue degree from the rural character and scenic amenities of the area, would be contrary to the provisions of Cork County Development Plan and would constitute an undesirable precedent for development of this nature in a scenic, sensitive rural landscape designated 'High Value Landscape' in the Cork County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

7th November 2022