



An
Bord
Pleanála

Inspector's Report

ABP-314160-22

Development	Construction of dwelling house, installation of wastewater treatment system and all associated site works.
Location	Derrymihin West, Castletownbere, Co. Cork.
Planning Authority	West Cork County Council
Planning Authority Reg. Ref.	22313
Applicant(s)	Jennifer Power
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Jennifer Power
Date of Site Inspection	6 th October 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located in the townland of Derrymihin West, approximately 1.2km to the northeast of Castletownbere town centre in West Cork. The site is accessed via a cul-de-sac from the public road to the north. There is an existing footpath and public lighting on the public road to the west of the junction of the cul de sac and public road. The access to the appeal site is located approximately 50m from the public road and the cul de sac is unsurfaced for this distance. This cul-de-sac runs for approximately another 110m to southwest. There are two existing detached dwellings on the western / opposite side of the cul de sac to the appeal site.
- 1.2. The site itself is of regular shape and slopes upwards from its western boundary (c.58.5m OD) to its eastern boundary (c.65.5m OD) and it has an area of 0.193 hectares. The site is presently not in use and gorse has established on the land. The site boundaries are open on the southern and northern sides and a low hedgerow runs along the western and eastern boundaries.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached dwelling house on the site at Derrymihin West, Castletownbere, Co. Cork.
- 2.2. The proposed house is single storey and traditional in design. The proposed house has a floor area of 173.76m² and a ridge height of 6.024m, with render finish and black slates / tiles. The house would be served by a public water supply and an on-site wastewater treatment system. Some planting is indicated on the site layout plan, but not specified, along the northern, southern, and eastern site boundaries.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated 7th March 2022 Cork County Council issued a notification of decision to Refuse Permission for the proposed development for the following reason:

The proposed dwellinghouse and wastewater treatment system, coupled with a similar development at lands adjacent to the south (Ref 22/203) is now located

outside of the settlement within the mapped green belt where there is a strong presumption against new development unless acknowledged as an 'exception' with a local rural housing need and where under Objective RP 5-14 of the County Development Plan 2022-2028 making many 'exceptions' would lead to the 'incremental erosion of much of the Greenbelt'. The proposed development involves the erection of a new dwellinghouse without any substantiated rural housing need being demonstrated and does not constitute an 'exception' to the restriction on new dwellings and if permitted would lead to an unacceptable precedent for further development off a substandard private track over which the applicant has no control to improve, including the easterly emerging sightline at the L-4920-0 road junction that would lead to ad hoc piecemeal planning without a coherent strategy leading to the unsustainable insertion of numerous individual wastewater treatment systems in close proximity as well as proving no proper linkages and connectivity to the main settlement of Castletownbere. Having regard to the historical planning history including that permitted at appeal (PL 04.213763) the proposed development would therefore contravene materially objectives of the Development Plan, the 'Sustainable Rural Housing Guidelines for Planning Authorities' April 2005 and the 'National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer in the report dated 26th June 2022 stated that the location of the site is in an area designated as a Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1) per the Cork County Development Plan 2022-2028, that Objective RP 5-14 applied and that it was considered that the applicant had not demonstrated compliance with this objective, which is reflected in the decision of the Planning Authority.

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

3.2.2. Other Technical Reports

Area Engineer: The report dated 1st June 2022 highlighted concerns in relation to the ownership of the access road from the public road to the development site, including legal rights of way.

Roads & Transportation: The Senior Executive Engineer in the report dated 24th June 2022 highlighted concerns about permitting houses outside of the development boundary in the CDP.

3.3. Prescribed Bodies

Irish Water: No objection. Condition recommended.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. Appeal site:

PL 04.213763 (P.A. Ref. No. 04/9594): Permission granted to alter and extend house, site works for 8 no. serviced sites, to construct 14 no. holiday cottages, a reception, 56 no. houses, sewage treatment, 2 vehicular and 1 pedestrian accesses, and site works.

P.A. Ref. No. 08/821: Permission granted for a house.

4.2. Adjacent sites:

P.A. Ref. No. 07/1765: Permission granted for a house immediately to the west of the appeal site.

P.A. Ref. No. 08/822: Permission granted for a house immediately to the north of the appeal site.

P.A. Ref. No. 08/823: Permission granted for a house immediately to the south of the appeal site.

P.A. Ref. No. 22/203: Application withdrawn for a house and wastewater treatment system to the south of the appeal site.

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.

- 5.3.1. The appeal site is located within an area with a Rural Housing Policy Area Type designation of '**Town Greenbelt**'.

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.

Objective RP 5-14: Sustainability of Exceptions to Greenbelt Policies

Recognise that by reason of the number of people currently living within Greenbelt areas, the granting of regular exceptions to overall policy is likely to give rise over the years to incremental erosion of much of the Greenbelt.

Objective RP 5-20: Greenbelts around Main Towns GB 1-1

Discourage strongly new individual housing from being located within the greenbelts around the Main Towns. This restriction is relaxed in principle for individuals who can demonstrate a genuine rural generated housing need based on their social and/or economic links to a particular rural area in accordance with RP 5-4, or in the circumstances referred to in objectives RP 5-16 and RP 5-17, which also apply to Greenbelts around the Main Towns.

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. **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 the Beara Peninsula SPA (Site Code: 004155) which is located approximately 1.4km to the north 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 DCMA Consultants, Marino Street, Bantry, Co. Cork on behalf of the First Party, Jennifer Power. The main points made can be summarised as follows:

- Contend that a transitional agreement was put in place by Cork County Council whereby all planning applications submitted before the adoption of the new County Development Plan would be assessed under the policies of the previous County Development Plan and the Local Area Plan.
- State that the appeal site previously formed part of the overall Mariner's View development which was permitted on appeal under PL 04.213763 and permission for a house was granted on the site under P.A. Ref. No. 08/821.
- States that the applicant has the right to maintain and service the access route.
- Contends that the house design is relatively modest.
- States that the site was assessed and found to be suitable for on-site disposal of wastewater.

6.2. Planning Authority Response

The Planning Authority re-affirms its decision to refuse permission for the stated reasons and requests that the First Party appeal is dismissed to be consistent and to prevent ad hoc piecemeal planning that is not considered to be in the best interest of the proper planning and sustainable planning for the area.

7.0 Assessment

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

- Rural Housing Policy
- Traffic Safety and Site Access
- Other Issues
- 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 applicant has an economic or social need to live in this rural area that meets the requirements of the rural housing policy. The First Party contends that a transitional agreement was put in place by Cork County Council whereby all planning applications submitted before the adoption of the new County Development Plan would be assessed under the policies of the previous County Development Plan and the Local Area Plan. Further to this and in order to establish that the principle of a house is acceptable on the appeal site, the First Party states that the appeal site previously formed part of the overall Mariner's View development which was permitted on appeal under PL 04.213763 and permission for a house was granted on the site under P.A. Ref. No. 08/821.
- 7.1.2. For clarity and as stated earlier in this report, the Cork County Development Plan 2022-2028 came into effect as the statutory plan for the county on 6th June 2022. The appeal, therefore, must be assessed under the policies and objectives of this Plan. Under the Plan, the appeal site is located in an area identified as 'Town Greenbelt 1-1', and an 'Area Under Strong Urban Influence' 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

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

- 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.
- 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. Objective RP 5-20: Greenbelts around Main Towns GB 1-1 of the Plan states that it is the Council's policy to discourage strongly new individual housing from being located within the greenbelts around the Main Towns, but this restriction is relaxed in principle for individuals who can demonstrate a genuine rural generated housing need based on their social and/or economic links to a particular rural area in accordance with Objective RP 5-4. Further to this, Objective 5-14 states that the Council 'recognise that by reason of the number of people currently living within Greenbelt areas, the granting of regular exceptions to overall policy is likely to give rise over the years to incremental erosion of much of the Greenbelt.'
- 7.1.6. In terms of Objective RP 5-4 and the requirements of the rural housing policy, the application can be summarised as follows:
- a) The First Party is not a farmer, or a son / daughter.
 - b) The First Party is not 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 she has spent a substantial period of his life living in the local rural area.
- e) On the basis of the information provided, I consider that the First Party has not demonstrated that she is a returning emigrant who spent a substantial period of his life living in the local rural area and who now wishes 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.

7.1.7. 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 applicant meets the requirements of the Cork County Development Plan relating to rural housing in an area designated as 'Rural Area under Strong Urban Influence and Town Greenbelt 1-1' such as the appeal site. Given the location of the appeal site in an area also designated as an 'Area Under Strong Urban Influence' and the circumstances of the applicant, I also consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines.

7.2. Traffic Safety and Site Access

- 7.2.1. The access to the appeal site is approximately 50m from the public road along a private road / cul-de-sac. Following my site inspection, I noted the substandard nature of this road in terms of road condition, width and alignment. The road currently serves 2 no. houses, and I noted that the road cannot accommodate passing traffic, except at existing entrances to the houses.
- 7.2.2. The First Party merely states that the applicant has the right to maintain and service the access route. On the day of my site inspection, I noted that adequate sightlines are available to the west of the junction of the laneway accessing the appeal site and the public road. Although not demonstrated on the site layout plan, I note that the Area Engineer is satisfied with the sightlines to the east also and I am, therefore, satisfied that sightlines do not present as an issue.

- 7.2.3. However, based on my inspection of the site, I observed that the laneway is seriously substandard in terms of surface condition, width and alignment and that it is not possible for vehicles to pass for most of the length of the laneway. It would only be possible for vehicles to pass at existing entrances on the laneway.
- 7.2.4. In conclusion, I consider that the appeal site is located on a minor road/laneway which is seriously substandard in terms of surface condition, width and alignment and I consider further residential would exacerbate the existing problem. I, therefore, recommend that the proposed development would result in a traffic hazard due to this restricted access.

7.3. Other Issues

Ground Water

- 7.3.1. The First Party excavated the trial hole to a depth of 2.6m. No bedrock was encountered at this depth and no water table was visible. It is confirmed within the Site Characterisation Report that the appeal site is located over a locally important aquifer with extreme vulnerability, which requires a Groundwater Protection Response of R2¹. The T Value is stated as 7.75 (subsurface). Based on these results, the Site Assessor recommended a proprietary wastewater treatment system with secondary and tertiary treatment.
- 7.3.2. On the day of my site inspection, I noted that the ground conditions were good and consistent with those described within the Site Characterisation Form. On this basis, I do not consider the proposed development would be likely to pose a significant risk to ground water.
- 7.3.3. I conclude, based on the material submitted with the application, 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.

Design and Layout

- 7.3.4. As stated earlier in this report, the proposed development comprises the construction of a single storey house with a floor area of 173.76m² and a ridge height of 6.024m over finished floor level with render finish and blue / black slates. The existing site

boundaries are to be retained and both the northern and southern site boundaries will comprise of some planting, subject to a suitable condition requiring same.

- 7.3.5. I consider the proposed house design to be simple in form and design and, therefore, I am satisfied that the proposed house would not present any significant adverse visual impact on this high value landscape.

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 (Beara Peninsula SPA (Site Code: 004155) which is located approximately 1.4km to the north of the appeal 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 'Rural Area under Strong Urban Influence and Town Greenbelt 1-1' 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 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 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.

2. The site is located on a minor road which is seriously substandard in terms of surface condition, width and alignment. The traffic generated by the proposed development would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

Liam Bowe
Planning Inspector

2nd February 2023