



An
Bord
Pleanála

Inspector's Report

ABP-314234-22

Development	Construction of a house, garage, and wastewater treatment system.
Location	Feddaun, Mount Melleray, Cappoquin, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	22420
Applicant(s)	Martin Cahoon
Type of Application	Outline Permission
Planning Authority Decision	Grant Outline Permission
Type of Appeal	Third Party
Appellant(s)	Derek Whyte
Observer(s)	None
Date of Site Inspection	8 th of June 2023
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The application site (stated area 0.34ha) is located approximately 4kms to the north of Cappoquin town. Access from Cappoquin is via the R669 to the west and the site has frontage to the Local Primary road L-1024. The access to Mount Melleray Monastery (to the south west) and associated housing (Protected Structures) is to the south also from this local road. Some of these structures can be seen in the distance from the site.
- 1.2. This is an upland site, elevated from the road and there are hedgerows along the site frontage and northern site boundaries. There is a field gate to the site which is to be taken off the larger field area. There is a gated agricultural track to the north of the site. This is an area of sporadic rural housing and there is a house on the opposite side of the road at a lower level and another to the north of the subject site. There is a bridge further to the north.

2.0 Proposed Development

- 2.1. Outline Permission is sought to construct a House, Garage, a Wastewater treatment system and an entrance along with all associated site works.
- 2.2. A letter has been submitted from the applicant in support of his planning application.

3.0 Planning Authority Decision

3.1. Decision

On the 6th of July 2022, Waterford County Council granted outline permission subject to 7no. conditions for the proposed development. In summary the conditions included regard to the following:

No.1 – (a) Development to be in accordance with plans and particulars submitted,
(b) The siting, design and layout of the proposed dwelling and garage to be agreed at permission consequent stage.

No. 2 – Permission consequent to be made not later than 3 years beginning on the date of the grant of Outline Permission.

- No. 3 – Development Contributions in accordance with the Development Contribution Scheme in place at the time of the permission consequent.
- No.4 - Entrance, surface water drainage and roadside boundary treatment to be in accordance with the detailed requirements of the planning authority.
- No.5 - Installation and maintenance of the wastewater treatment system to be in accordance with the requirements of the planning authority and the ‘Code of Practice for Domestic Wastewater Treatment Systems (p.e< 10)’.
- No.6 – Continuous and indefinite maintenance of an adequate supply of potable water to serve the dwelling.
- No.7 – Site boundary treatment and landscaping.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner’s Report had regard to the locational context of the site, planning history and policy and to the submissions made. Their Assessment included the following:

- The subject site is located within a Structurally Weak Area – Policy SS8 of the WCDP 2011-2017 refers.
- Local Need criteria does not apply on Structurally Weak lands.
- The subject site does not appear to be in an area of ribbon development.
- The subject site is on a scenic route and the design of any dwelling should not detract from this nor have a potential effect on the complexes of Mount Melleray Abbey.
- The proposed access is from the Local Primary Road L-1024.
- A site suitability assessment has been undertaken in accordance with the EPA CoP. It is proposed to install a packaged wwts with soil polishing filter.
- As this is an outline planning application development, contributions are not liable, same will be liable at permission consequent stage.
- They recommended that outline permission be granted.

3.3. Other Technical Reports

The Planner's Report advises that there were no referrals.

3.4. Prescribed Bodies

None

3.5. Third Party Observations

Submissions from local residents are summarised as follows:

- Lack of clarity in the information submitted having regard to land ownership, site characterisation details and drawings.

4.0 Planning History

The Planner's Report notes planning applications in the vicinity. This includes:

Subject Site

- Reg.Ref.96630 – Outline Permission granted to Seamus O'Donnell for two dwellings, septic tanks and entrance. As shown on the mapping and noted on the application form this related to the subject site.

In the vicinity

- Reg.Ref. 16/111 – Indefinite Retention Permission granted subject to conditions to Patrick Kennerick for extensions and alterations to existing house, garage type structure extension and storage shed.

This relates to the house on the opposite side of the road to the subject site.

- Reg.Ref. 05/442 – Permission granted subject to conditions to James & Pauline Fleming to demolish existing dwelling on site and to construct a dormer dwelling and connect to existing septic tank.

This house has been constructed and is to the north of the subject site.

5.0 Policy Context

5.1. National Planning Framework (NPF)

In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:

National Objective 19: 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,
- 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. Regional Spatial & Economic Strategy for the Southern Region

Section 3.7 refers to Rural Areas and this includes Objective RPO 27 i.e.:

To support rural economies and rural communities through implementing a sustainable rural housing policy in the Region which provides a distinction between areas under urban influence and other rural areas through the implementation of National Policy Objective 19 regarding Local Authority County Development Plan Core Strategies.

RPO 27 addresses the issue of urban-generated housing to restrict the development of rural housing based on clearly defined eligibility criteria. This facilitates the needs of rural communities, whilst controlling pressures for urban-influenced housing demand.

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

This seeks to encourage and support appropriate development at the most suitable locations. A distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working fulltime or part-time in rural areas. This includes reference to people who have lived most of their lives in rural areas and are building their first homes.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.3 refers to Assessing Housing Circumstances. This includes exceptional health circumstances.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads.

EPA Code of Practice for Domestic Wastewater Treatment Systems 2021

Its purpose is to provide guidance on domestic waste water treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

The current CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) issued in 2009. This CoP

applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

5.4. **Waterford City and County Development Plan 2022-2028**

This is the pertinent Plan. Volume 1 provides the Written Statement.

Volume 2 – Development Management Standards

Regard is had to the following:

Settlement Strategy

Table 2.2 of Volume 1 provides the Settlement Hierarchy and Typology. Rural Nodes are noted in Class 5 and include Mellary. These can support small scale cluster housing. It is noted that the site is outside of this Node and is within the Rural Area.

Section 2.10 seeks to support the sustainable development of rural areas, to encourage growth and arrest the decline of rural towns and villages in a manner consistent with NPO 15-20.

Chapter 7 refers to Housing & Sustainable Communities. Section 7.11 to Housing in Rural Villages and the Open Countryside.

Map no.6 provides the Rural Housing Classification. The site is within an 'Area Under Strong Urban Influence'. This Map notes that the County has been classed as such.

Policy H28 provides: *We will facilitate the provision of single housing in the countryside, in rural areas under urban influence, based on the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria as set out in this plan and in relevant statutory planning guidelines, having regard to the viability of smaller towns and rural settlements.*

Section 7.11.2 refers to Housing Need and distinguishes between persons with an Economic and/or Social Need to live in a particular rural area i.e:

Persons with an economic need to live in the particular rural area would include those whose employment is intrinsically linked to the rural area in which they wish to build (e.g. farming, horticulture, forestry, bloodstock, fishing or other similar rural employment) and who require a dwelling to meet their own housing needs close to their place of work.

Persons with a demonstrable social need to live in a particular local rural area would include those that have lived a substantial period of their lives (7 years or more) in the local rural area and who require a dwelling to meet their own housing needs close to their families and to the communities of which they are part. A local area for the purpose of this policy is defined as an area generally within a 10km radius of the applicant's former place of residence. This rural housing policy will apply equally to those living in the local area, who require a new dwelling to meet their own housing need, as well as returning emigrants wishing to establish a permanent residence for themselves and their families in their local community.

Section 7.11.3 refers to Provision for an Occupancy Condition for a period of 7 years.

Tourism

Section 4.10 refers to Sustainable Tourism and Mount Melleray Abbey is listed as being within the broad range of tourist amenities and attractions in the county. Tourism Policy Objectives include regard to sustainable tourism.

Landscape

Volume 4 provides the Maps. Map 5 shows that the site is located in a 'Low Sensitive Area'. Mount Melleray to the south west is within a 'High Sensitive Area'. The upland area to the north is described as 'Most Sensitive'. The site adjoins a Scenic Route.

Environment

Section 9.3 of Volume 1 refers to Water Quality and Objective WQ 02 refers to Achieving High/Good Water Quality Status. This refers to the Water Framework Directive and Associated Legislation and Objective WQ 02 includes the following:

- *Ensure that all development does not negatively impact on water quality and quantity, including surface water, ground water, designated source protection*

areas, river corridors and associated wetlands, estuarine waters, coastal and transitional waters.

- *Ensure new development complies with the relevant EPA Code of Practice: Domestic Wastewater Treatment Systems (PE ≤ 10) (2021) or any amendments thereto.*

Section 9.4 of Volume 2 refers to Wastewater Infrastructure. Policy DM 49 refers to wastewater treatment systems. This includes within the Rural Countryside/Un-serviced Areas.

Section 9.7 refers to Nature Conservation Sites and Figure 9 shows the SACs and SPAs in Waterford. Table 9.1 provides the list of the SACs which includes the Blackwater River (Cork/Waterford) SAC, and notes the qualifying interests of the site.

Access

Section 5.10 of Volume 1 refers to the criteria for access onto Regional and Local Roads/Urban Streets. Policies Trans 44 – Trans 50 refer.

Section 8.6 of Volume 2 refers to the Sightline Requirements.

Section 8.7 refers to Sightline Provisions (b) 2.4m (single dwellings). Figures 8.1 and 8.2 refer.

Section 8.9 refers to Hedgerow Protection and roadside boundary treatment.

Policy DM48 – refers.

5.5. Natural Heritage Designations

The Blackwater River (Cork/Waterford) SAC (site code: 002170) is located c. 2.2kms to the east of the site.

5.6. EIA Screening

Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the 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

A Third Party Appeal has been submitted by Derek Whyte of Whyte, Planning Consultants Ltd. The Grounds of Appeal include the following:

- The development is located in a highly scenic area of Waterford. They believe that the house is entirely speculative in nature and there is no need to construct another house in this rural area.
- They consider that the planning authority has justified the positive decision on one planning policy of encouraging development in de-populated areas.
- They ask the Inspector and the Board to recognise the speculative nature of the development, the lack of local need associated with the development and the local landscape's inability to absorb the development and to overturn the decision of the planning authority.

6.2. Applicant Response

A response to the Third Party Appeal has been submitted by Michael Keane, Ailitire, on behalf of the applicant Martin Cahoon. This includes the following:

- The purchase and development of the site at Melleray began in 1999 and has continued to this day and is rooted in the applicant's deep attachment to Melleray. It is not speculative as suggested by the objector. The applicant plans to retire to Feddaun to live.
- The application provides a dwelling in accordance with the local authority's development plan policy objective and will provide accommodation in this declining population area.
- The subject site is on a scenic route and the design of the dwelling at permission consequent stage on the grant of outline permission stage will have regard to same.

- The site is well screened with extensive road hedgerows and mature tree lines above and beyond the site. The road hedgerows will be retained save where the entrance works dictate.
- The future dwelling will sit below the established tree line at the rear integrating the dwelling into the landscape.
- The proposal will not detract from the visual or residential amenities of the area and this will be ensured at permission consequent stage.
- They ask the Board to uphold the planning decision made by Waterford City & County Council and to grant outline permission.

6.3. **Planning Authority Response**

There is no response from the Planning Authority on file.

6.4. **Observations**

None noted.

7.0 **Assessment**

7.1.1. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and the response on behalf of the applicant, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with Rural Housing Policy
- Design and Layout and Impact on the Character of the Area
- Road Safety
- Drainage issues
- Appropriate Assessment

7.2. Compliance with Planning Policy

- 7.2.1. The Settlement Strategy has regard to Rural Generated Housing Need. This is a matter of compliance with rural settlement strategy which requires consideration of not just local but also regional and national planning provisions that deal specifically with this matter. National Policy Objectives 18 and 19 of Project Ireland 2040, refer. As noted in the Policy Section above, Objective 18 seeks to develop a programme for new homes in small towns and villages. Objective 19 seeks that: “In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements”.
- 7.2.2. Regard is also had to the Sustainable Rural Housing Development Guidelines 2005 where the strategy indicates that there should be a presumption against urban generated one-off housing in rural areas adjacent to towns. The site is located in an area classified as being under “Stronger Rural Area” as identified in the Guidelines. Section 3.2.3 refers to Rural Generated Housing. This includes reference to “people who have lived most of their lives in rural areas and are building their first homes”. It refers to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full or part time in rural areas’. Section 4.3 of the Guidelines refers to Assessing Housing Circumstances.
- 7.2.3. It is noted that this proposal was considered by the Council, under the Waterford County Development Plan 2011-2017 and that their Assessment includes reference to a number of policies and objectives under this plan. This has now been superseded by the policies and objectives of the Waterford City & County Development Plan 2022-2028, and those of relevance have been noted in the Policy Section above and further in the Assessment below.
- 7.2.4. In the subject case it is noted that the Planner’s Report refers to the site being located within a Structurally Weak Area, refers to Policy SS8 of the WCDP 2011-2017 and noted that local need criteria does not apply on Structurally Weak lands. It is noted that the Rural Housing Strategy Map then showed the lands in the north western part of the county which included the Melleray area and the subject site as being in a ‘Structurally Weak’ area.

- 7.2.5. However, this has changed in the current Waterford City & County Development Plan. Section 2.10 of Volume 1 which relates to the Spatial Strategy in Rural Areas notes that reflecting policy objectives NPO 19 and RPO 27 of the NPF and the RSES respectively and the Council's assessment of the available data as listed that this: *has resulted in the identification of all County Waterford as being under urban influence and as such that the provision of single housing in the open countryside should be based on considerations of economic, social or local housing need to live in a rural area, and siting and design criteria for rural housing in statutory guidelines and plans. Policy objectives in this regard are set out in Section 7.11.2.*
- 7.2.6. Section 7.11.2 of the current Development Plan refers to 'Rural Areas under Strong Urban Influence'. This sets out the housing need criteria relative to persons with an economic and/or social need to live in a particular rural area. This is quoted in the Policy Section above and Objective H28 refers. This is also shown on Map 6 of Volume 4 '*Rural Housing Classification*' where the whole county is shown as an 'Area under Strong Urban Influence'. Therefore, local needs criteria does now apply and has to be taken into consideration.
- 7.2.7. The applicant has submitted a letter with the application to outline his need to reside on the site and to be close to Mount Melleray Abbey. The First Party response reiterates this, noting the history of the site and the applicant's deep attachment to Mount Melleray Abbey. Also, providing that the applicant wishes to retire to the site and that this is not a speculative development. However, it is not known whether the applicant has previously lived in this local area or is planning to build his first house. Documentation has not been submitted to demonstrate that the applicant has an economic or social need to reside in this rural area. Therefore, it is not considered that it has been established that the applicant has a local need to reside on this site or that compliance with local needs criteria in Section 7.11.2 or Objective H28 has been demonstrated.

7.3. **Design and Layout and Impact on the Character of the Area**

- 7.3.1. The site area is given as 0.34ha. The Site Layout Plan shows that proposed house is to be located towards the rear of the site, set back c.54m from the local road. It is to be roughly in line with the house to the north of the site. This is an application for

outline permission so details of the house type would be submitted permission consequent stage.

- 7.3.2. The site is elevated above the road and is located on a scenic route. It is also relatively proximate (although not adjoining) Mount Mellory Abbey which is a Protected Structure as noted in the current Development Plan. The National Inventory of Architectural Heritage also includes the boarding houses to the south associated and within the grounds of the Abbey as Protected Structures. In view of these issues, I would recommend that if the Board decides to grant that it be conditioned that the house be single storey. Also, at permission consequent stage that a landscaping scheme, to include retention and argumentation of existing hedgerows and provision of a hedgerow along the southern boundary (of species native to the area) be conditioned.

7.4. **Access issues**

- 7.4.1. The proposed entrance is from the Local Primary Road L-1024. There is an existing field gate entrance to the site, which is set back and does not appear much used. It is proposed to provide a new vehicular entrance to the site to the south of this and the entrance to the house on the opposite side of the road. This is shown set back and splayed.
- 7.4.2. Section 8.6 of Volume 2 of the current Development Plan refers to the Sightline Requirements. Table 8.1 provides the Minimum Sightline Requirements. Category E refers to those for 80km/h Local Roads (Minimum Sight (Y) Distance – 55m). Section 8.7 refers to Sightline Provisions (b) 2.4m (single dwellings). Figure 8.1 shows Sightline Configuration. Section 8.9 and Policy DM48 refers to Hedgerow Protection.
- 7.4.3. The Site Layout Plan provides that there are 55m sightlines shown from a point 2.4m back from the carriageway edge at the centre of the proposed entrance. While these maybe achievable, I noted on site that the road is narrow with poor horizontal and vertical alignment, with bends that restrict visibility, further to the north and south. Also, that there is not a roadside verge along the road frontage of the site, and it appears that an area of hedgerow will have to be removed to facilitate sightlines. It has not been demonstrated that Policy DM48 (Hedgerow Protection) will be complied with. I would consider that this proposal will lead to a proliferation of

vehicular entrances in this area, in close proximity to the entrance to Mount Melleray. Tourism Policy Objectives include regard to sustainable tourism. This is listed in Section 4.10 of Volume 1, as being within the broad range of tourist amenities and attractions in the county.

7.5. Drainage

- 7.5.1. It is proposed to serve the proposed development on site by a wastewater treatment system and public water mains from the roadway, and the locations of these are shown on the Site Layout Plan. The wastewater treatment system is to be located towards the site frontage. The Site Layout Plan also shows the location of the septic tank and percolation area on the adjoining site for the dwelling to the north.
- 7.5.2. It is noted that the application was submitted on the 18th of May 2022 and the Site Characterisation Form submitted with the application is dated 22nd of May 2022, so the EPA CoP 2021 Guidelines are applicable.
- 7.5.3. Details on the Site Characterisation Form include that the vulnerability of the site is high and the aquifer is locally important. The groundwater protection response is R1. Appendix E of the 2021 Guidelines provide details of 'Groundwater Protection Responses'. Table E1 refers. This includes that for this response a wastewater treatment system is acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).
- 7.5.4. The depth to bedrock on this upland site is noted at 2.1m and it is noted that the water table was not encountered. The site is recorded as having an average 'T' test result of 25.67 (min/25mm). Comments made note that this indicates that there is reasonable drainage in the subsoil and that percolation decreases with depth. It is provided that a 'P' value of 14.94 (min/25mm) indicates that the topsoil is suitable for use in the construction of a polishing filter (not required in this instance). As per the Site Characterisation form it is proposed to provide a secondary treatment system and polishing filter. Details are given of the wastewater design specification. A packaged system is proposed.
- 7.5.5. The information submitted in terms of the wastewater treatment system does not highlight specific concerns and I note the PA is satisfied with regard to the

information submitted. Provided it is properly installed and well maintained to current standards there do not appear to be issues with the wastewater treatment proposed.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.0 Recommendation

- 8.1. I recommend that outline permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to: -

- (i) The location of the site in an unserviced rural area under urban influence, the Board is not satisfied that the applicant has demonstrated compliance with the qualifying criteria for rural housing of economic or social need as per Section 7.11.2 and Objective H28 of Volume 1 of the Waterford City and County Development Plan 2022-2028.
- (ii) the national policy, as set out in National Policy Objective 19 of the National Planning Framework 2018 and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and local Government in April 2005, that 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, and
- (iii) the documentation submitted with the application and appeal,

the Board is not satisfied that the applicant has provided sufficient justification for a rural housing need to live in this rural area, or that the applicant's housing need cannot be satisfied in a smaller town or rural settlement. In the absence of a sufficient justification, it is considered that the proposed development would contribute to the development of random rural housing in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would be contrary to the Sustainable Rural Housing Guidelines and to overarching national policy, and the provisions of the Waterford City and County Development Plan 2022-2028 and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would add to the proliferation of vehicular entrances in the area and would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a local road that is substandard in terms of width and alignment. It is also considered that compliance with Development Management DM 48 of Volume 2 of the Waterford City and County Development Plan 2022-2028, has not been demonstrated having regard to the achievement of sightlines and the protection of the integrity of the roadside hedgerow.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Angela Brereton
Planning Inspector

20th of June 2023