



An
Bord
Pleanála

Inspector's Report

ABP-314418-22

Development	Construction of a house and installation of small treatment plant.
Location	Killaminoge, Innishannon, Co Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	22/5358
Applicant(s)	Darren and Rosie Linham
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party v. Grant
Appellant(s)	Damian Coleman DJ Barry
Observer(s)	None
Date of Site Inspection	19 July 2023
Inspector	Cáit Ryan

1.0 Site Location and Description

- 1.1. The site is located in the townland of Killaminogue, approximately 4km east of Innishannon and 16km south west of Cork city. The area is characterised by undulating rural landscape, some one-off houses and farms. The site is located on local road L-7208-0. The road falls from south west to north east along this stretch of road. There is a dwelling directly to the south west of the site, and a dwelling opposite, to the southwest of which is the entrance to a dwelling substantially set back from the road.
- 1.2. The site area is given as 0.21ha and is of rectangular shape. The single-storey dwelling to the south west is located at a higher level than the subject site. The south western site boundary comprises a concrete block wall of varying height, and there is a separate timber fence within that neighbouring site towards the rear. There is a mature hedgerow/vegetation along north west (rear) and north east (side) boundaries, which bound adjoining fields. The roadside frontage along the south eastern boundary comprises timber 'hit and miss' fencing along most of its extent, with barbed wire also above the fencing to the south west of the vehicular entrance. The more easterly part of the roadside boundary comprises hedgerow and trees.
- 1.3. A large number of structures on site include sheds, a shipping container, various structures associated with the keeping of animals, delapidated trailers, and wooden pallets. A concrete area extends from the vehicular entrance toward the rear of the site. Much of the site is overgrown. A postbox is in place at the vehicular entrance.

2.0 Proposed Development

- 2.1. Permission is sought for a dwelling house, installation of small treatment plant and associated site works. The proposed dwelling would comprise an L-shaped single-storey bungalow of 194.2sqm, extending to a ridge height of 5.6m. External finishes comprise smooth plaster, blue/black Thrutone slate, and black hardwood windows and doors.
- 2.2. It is proposed to relocate the vehicular entrance in a north easterly direction, to remove the existing timber fence and to provide a 1m high natural bank, to be set

back to provide 80m sightlines. A wastewater treatment system with soil polishing filter is proposed. There is an existing bored well on site.

- 2.3. Documentation lodged with the application includes a Supplementary Application Form SF1 and a cover letter from Rosie Linham, supporting the applicants' case for a dwelling at the site. A map showing the location of their current and previous accommodation since 2007 is attached.

3.0 **Planning Authority Decision**

- 3.1. The planning authority decided to grant permission subject to 13 no. standard conditions. Condition 1 requires that the proposed dwelling house shall be used solely as the place of permanent residence of the applicant and/or members of their immediate family for a minimum period of 7 years.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Basis for planning authority decision:

Area Planner includes:

- Noted that the site was part of a dilapidated farm complex and has the characteristics of a brown field site.
- Considered that the applicants demonstrated a genuine rural generated housing need, and noted the previous refusals on site. Recommended permission subject to conditions.

3.2.2. Other Technical Reports

Area Engineer noted that the site is suitable, subject to conditions.

3.3. **Prescribed Bodies**

None

3.4. Observations to the Planning Authority

2 no. submissions were received by the planning authority. The issues raised in the appeal are similar to those raised in the grounds of appeal and are summarised within the grounds of appeal set out below.

4.0 Planning History

Subject Site

P.A. Ref. 19/6401 and ABP-306278-19: Permission was refused in 2020 to Darren and Rosie Linham for a dwelling and sewage treatment system for the following 2 no. reasons:

1. The subject site is located within an area under strong urban influence which is an area under significant pressure for rural housing, as identified in the Cork County Development Plan, 2014. Furthermore, the site is located within an “Area Under Strong Urban Influence” as set out in the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in 2005, wherein it is policy to distinguish between urban-generated and rural-generated need for a house in the rural countryside. In addition, it is national policy, under National Policy Objective 19 in the National Planning Framework in areas under urban influence (as in this case), “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”.

On the basis of the documentation submitted with the planning application and the appeal, it is considered that the applicants do not come within the scope of the housing need criteria as set out in the Cork County Development Plan, 2014. Furthermore, the Board is not satisfied that the applicants have demonstrated an economic and social need to live at this specific rural location, or that the applicants’ housing needs could not be satisfactorily met in a smaller town or settlement, in line with national policy. The proposed development would, therefore, be contrary to the Development Plan provisions, to the Ministerial Guidelines and to the over-arching

national policy, and be contrary to the proper planning and sustainable development of the area.

2. The proposed development, when taken together with existing dwellings in the vicinity, would represent an excessive density of development in a landscape with limited capacity to assimilate further development, would contribute further to the erosion of the rural landscape character of an area with limited capacity to assimilate further development and would conflict with policy objective RCI 6-1 of the Cork County Development Plan, 2014. The proposed development would establish an undesirable precedent for similar development in the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

P.A. Ref. 16/4817 and ABP Ref. PL. 04.246550: Permission was refused in 2016 to Darren and Rosie Linham for a dwelling and small treatment plant. The reason for refusal was that the proposal would be located in an Area under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities (DEHLG, 2005) and in the current development plan, whereby it is policy to discourage urban generated housing, it would further erode the rural character of the area, would lead to demands for the provision of further public services and community facilities, and would be contrary to said Guidelines.

P.A. Ref. 14/5545 and ABP Ref. PL 04.244526: Permission was refused in 2015 to Darren and Rosie Linham for a dwelling and small treatment plant. The reason for refusal was similar to that of ABP Ref. PL. 04.246550.

P.A. Ref. 13/6514 and ABP Ref. PL 04.243428: Permission was granted in 2014 to Darren and Rosie Linham for retention of store house, permission for the construction of 2 no. stables, 1 no. tack room and timber palisade fence on the western boundary and associated site works. Condition 4 states that a maximum of 2 no. horses shall be housed in the proposed development, no pigs or other animals shall be kept at the site, and all existing pig and poultry pens, and dog runs, shall be permanently removed from the site within three months of the date of the order.

P.A. Ref. 07/8470: Permission was refused in 2007 to Michael O'Connell for demolition of 2 no. sheds and construction of 2 no. sheds for storage of building materials.

P.A. Ref. 04/4567: Permission was refused to Davina McCarthy and Raymond Keane for dwelling and garage.

P.A. Ref. 02/4238: Outline planning permission was refused in 2002 to Michael Mehigan for a dwelling.

P.A. Ref. S/01/4374 and ABP Ref. PL 04.127009: Outline planning permission was refused in 2002 to Michael Mehigan for demolition of sheds and construction of a dwelling. The reason for refusal was on grounds that the proposed development would contribute to an excessive density of development in a rural area, would militate against preservation of the rural environment and lead to demands for the uneconomic provision of public services and community facilities.

Nearby Sites

P.A. Ref. 20/4339: Permission was granted in 2020 for a house at Killaminogue, at a site located approximately 115m south west of the subject appeal site, on the same (northern) side of road. This dwelling has been constructed.

P.A. Ref. 22/6698: Permission was granted in 2023 for house at a site located approximately 415m south west of the current appeal site, on the opposite (southern) side of road.

P.A. Ref. 20/6412: Permission was granted in 2021 for house at Killaminogue, at a site located approximately 360m south east of the current appeal site.

P.A. Ref. 21/4755: Permission was granted in 2022 for house at Killaminogue. This site is approximately 680m northwest of current appeal site, but is more distant from same via the local road network.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

In terms of rural settlement policy, the site is located within Rural Area under Strong Urban Influence, which is described as one which is within easy commuting distance of Cork City. It is stated (Section 5.4.4) that 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 5-1: Urban Generated Housing Discourage urban-generated housing in rural areas, which should normally take place in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network. Encourage the provision of a mix of house types in towns and villages to provide an alternative to individual housing in the open countryside.

Objective RP 5-2: Rural Generated Housing Sustain and renew established rural communities, by facilitating those with a rural generated housing need to live within their rural community. Encourage the provision of a mix of house types in towns and villages to provide an alternative to individual rural housing in the countryside.

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.

In relation to **Environmental and Site Suitability Requirements**, Section 5.6.3 states that the planning and sustainable development criteria, against which an application is assessed, would include:

- Whether the siting, design and scale of the proposal is appropriate to the surroundings;
- Whether any proposed vehicular entrance would endanger public safety or give rise to a traffic hazard;
- Whether an excessive length of roadside hedgerow or trees need to be removed to provide an entrance.

It also states (Section 5.6.5) that those intending to build houses in rural areas are advised to consult the Cork Rural Design Guide for advice on site choice, design, and landscaping at an early stage in their preparations.

Objective RP 5-9: Full-Time Home-Based Business in a Rural Area Facilitate the housing needs of persons who can satisfy the Planning Authority of their long-term commitment to operate a “bona fide” full time business from their proposed home in the rural area.

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

And

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

through submission of legal documentation that they have sufficient funding committed to start and operate the business. The Planning Authority will normally regulate the programme of development, occupancy and use of the full-time home-based business by either an appropriate planning condition and/or enforceable legal agreement.

This objective applies to all rural housing policy area types.

Objective RP 5-24: Ribbon Development Presumption against development which would contribute to or exacerbate ribbon development.

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.

The Landscape Character Type in this area is Broad Fertile Lowland Valleys (Area 6a) of the Development Plan. These are areas of high landscape value and high landscape sensitivity, and of county importance. Section 14.8.5 states that high sensitivity landscapes are vulnerable landscapes with the ability to accommodate limited development pressure, and that if pressure for development exceeds the landscape's limitations the character of the landscape may change.

The site is within Flood Zone C.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and

lands zoned for such development. A number of rural area types are identified including rural areas under strong urban influence which are defined as those in proximity to the immediate environs or close commuting catchment of large cities and towns. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs. Examples of rural generated housing need outline 'persons who are an intrinsic part of the rural community' to include people who have lived most of their lives in rural areas and are building their first homes, and 'persons working full-time or part-time in rural areas'.

5.3. National Planning Framework

- 5.3.1. National Policy Objective 15 Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- 5.3.2. National Policy Objective 19 makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4. Natural Heritage Designations

There are no designated areas in the vicinity of the site.

5.5. EIA Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of

significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Two no. third party appeals have been submitted from Damian Coleman and D.J. Barry. The main issues raised in the grounds of appeal are as follows:

- Excessive density of development and ribbon development. This is 4th property on that side of road. Three other sites have been sold subject to planning along this 1 mile stretch of road, but are spread out along road. A further development would militate against preservation of immediate rural environment.
- 5 no. planning applications for a house on this site were refused. An Bord Pleanála refused permission to demolish sheds and construct a house on this site in 2001; Ref. ABP-127009.
- An Bord Pleanála have overturned 3 no. council approvals to the same applicants on same property. No evidence provided of change to applicants' housing need.
- The applicants' current accommodation is 10-15 minute drive from the site. No urgent need to locate in this area should they wish to expand operations. Applicants have been visiting the site for a number of years to tend to 2-3 pigs, dogs, poultry and a horse.
- The applicants previously owned a property in the UK, details of which are on P.A. Ref. 14/5545.
- Applicant 1 lists occupation as pig farmer/welder, which is different to that stated in 2016 planning application. Pig Herd Number provided but no Pig Herd Register provided. Applicant 2 states occupation as equine therapist, but no documentation provided relating CRO registration. If Applicant 2 develops an equine business, there is no need to dwell at Killaminogue.

- Applicants appear to be creating rural needs into order to be able to build. No indication that the applicants have sufficient land for farming.
- Planner's interpretation of Category (d) of policy RCI 4-2 in the Cork County Development Plan 2014 is incorrect.
- Site notice is part-obsured, name and address are unclear, and notice is in distressed condition.

6.2. Applicant Response

The applicants' response to the grounds of appeal include:

- The appeals are vexatious.
- Photograph shows that planning notice was in perfect condition. Applicants had to re-erect it as it had become loose.
- Queries why one of the appellants (Damian Coleman) is using PO Box as his address.
- None of the parties have objected to larger, greenfield developments.

6.3. Planning Authority Response

The Planning Authority has confirmed that it has no further comment to make.

6.4. Observations

None.

7.0 Assessment

7.1. I consider that the main issues in this appeal relate to compliance with rural housing policy, development pressure and landscape and site notice. Appropriate Assessment is also considered. The main issues are dealt with as follows:

- Compliance with Rural Housing Policy
- Development Pressure and Landscape

- Site Notice
- Appropriate Assessment

7.2. Compliance with Rural Housing Policy

- 7.2.1. The site is located in a Rural Area under Strong Urban Influence, due to its proximity to Cork City and environs and Bandon. Such areas have been identified in the Development Plan due to the pressure that they have sustained for urban generated development in a rural area. The Development Plan rural housing policies seek to facilitate housing need requirements of rural communities, particularly for immediate family members on family farms/landholdings, while directing urban generated housing into towns and villages. The applicants must show a genuine rural generated housing need based on their social and/or economic links to the area, and must demonstrate that they comply with one of the categories listed (a) to (e) of Development Plan Objective RP 5-4. The applicants are not farmers, nor sons or daughters of farmers, and are not taking over the ownership and running of a farm, and so categories (a) and (b) do not apply.
- 7.2.2. Based on the information on file, I do not consider that it has been adequately demonstrated that the applicants work full-time in farming, or on a part-time basis where it is the predominant occupation. While I note that a Certificate of Registration relating to business name West Cork Pork, dated 2020, with a principal place of business at Killaminogue, was lodged with the application, I am not satisfied that it has been demonstrated this is a predominant occupation. The applicants state that they own the site. However, the site does not form part of any overall landholding. I note that the applicants state that a lease is available to move livestock should permission be granted, and that the purchase of land is conditional on where they live. However, having regard to all documentation on file, including the Supplementary Application Form SF1, and having inspected the site, I consider that it has not been demonstrated that the applicants comply with category (c).
- 7.2.3. Category (d) relates to 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. The applicants state that they have lived in the local area since 2007, and have provided addresses since then to date. The applicants' current place of residence since 2016 is at Lissanisky, Upton,

Innishannon, an approximately 8km road journey from the subject site. Having regard to the information on file, it is considered that the applicants have demonstrated that they live in the wider local area, and would comply with this aspect of category (d).

- 7.2.4. However, the applicants indicate that they own or have previously owned a residential property in the UK, on P.A. Ref. 14/5545 (ABP Ref. PL 04.244526). Objective RP 5-4 relates to applicants who wish to build a first home for their permanent occupation. Given that the applicants have or previously had a residential property, albeit in the UK, the proposed development could not be considered a first home. It has not been demonstrated therefore that the applicants comply with category (d) in this regard.
- 7.2.5. Category (e) relates to returning emigrants, and as neither applicant is originally from the local area, this category is not applicable in this case.
- 7.2.6. The Sustainable Rural Housing Guidelines state that rural areas under strong urban influence exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, and evidence of considerable pressure for housing. Circumstances for which a rural generated housing need may apply include persons who are an intrinsic part of the rural community, have lived most of their lives in rural areas and are building their first homes, and persons whose work is intrinsically linked to rural areas.
- 7.2.7. Having regard to the location of the proposed development, all documentation on file, and the planning history of the site, it is considered that the applicants have not demonstrated that they comply with Objective RP 5-4 of the Development Plan. Refusal of permission is recommended on this basis.

7.3. Development Pressure and Landscape

- 7.3.1. The grounds of appeal include that the proposed development would result in an excessive density of development. Documentation on file indicates that the site is a brownfield site, having previously accommodated a farm complex. The proposed dwelling house is single storey. While the floor area would be relatively large at approximately 194sqm, due to the overall design and L-shaped footprint, the dwelling would appear to be of limited scale. The house design is a contemporary

version of the vernacular 'cottage' tradition, comprising an elongated front elevation facing the road.

- 7.3.2. The site is located within the landscape character Broad Fertile Lowland Valleys (Area 6a), which are areas of high landscape value and high landscape sensitivity. High sensitivity landscapes are vulnerable landscapes with the ability to accommodate limited development pressure. Notwithstanding the relatively low-rise nature of the proposed dwelling house, it is considered that the proposed development, taken together with the existing dwellings in the vicinity, would represent an excessive density of development in a landscape with limited capacity to assimilate further development, would contribute further to the erosion of the rural landscape character of the area, and would conflict with Objective GI 14-9 of the Development Plan. Refusal of permission is recommended on this basis.

7.4. **Site Notice**

In terms of the alleged irregularities relating to the content and condition of the site notice erected on site, I note that this matter was considered acceptable by the planning authority. I am satisfied that this did not prevent the concerned parties from making representations.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, which comprises construction of a dwelling house, installation of a small treatment plant and associated site works, and the distance of the proposed development to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. It is recommended that permission be **refused** for the reasons set out below.

9.0 Reasons and Considerations

1. The subject site is located within a Rural Area under Strong Urban Influence, which is an area identified as under significant pressure for rural housing in the Cork County Development Plan 2022-2028. Having regard to the documentation submitted with this application and appeal, it is considered that the applicants do not come within the scope of the housing need criteria as set out in Objective RP 5-4 of the Cork County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development, taken in conjunction with existing dwellings in the vicinity, would represent an excessive density of development in a landscape with limited capacity to assimilate further development, would contribute further to the erosion of the rural landscape character of the area and would conflict with Objective G114-9 of the Cork County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Cáit Ryan
Senior Planning Inspector

21 September 2023