



An
Bord
Pleanála

Inspector's Report

ABP-314529-22

Development	To construct a proposed dwelling house, garage, treatment unit, new entrance and all ancillary site works.
Location	Kilcanway, Killavullen, Mallow, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	224888
Applicant(s)	Ger And Marie Sheehy
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Ger And Marie Sheehy
Observer(s)	None
Date of Site Inspection	11 th of August 2023
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located along a local road connecting the N73 and N72 National roads c. 7 km north east of Mallow. The local road is narrow in width with limited capacity for two cars to pass in the vicinity of the site. The site is agricultural in nature and benefits from a mature roadside boundary hedgerow with some mature trees in the south west corner near the proposed entrance. The site has a stated area of 0.325ha.
- 1.2. Part of the north and eastern boundary of the site is located within the archaeological zone of notification for CO025-091, an Enclosure. The National Monument Service's 'Historic Environment Viewer' describes¹ it as-

"In tillage. Depicted as hachured circular enclosure (diam. c. 12m) on 1842 OS 6-inch map. Levelled; according to local information, circular enclosure visible when field ploughed."

2.0 Proposed Development

- 2.1. This application is for-
- A house (238 sq.m, two storey 9.265m high),
 - garage (64.39 sq.m, 5.133m high),
 - wastewater treatment unit- (septic tank and percolation area)
 - vehicular entrance and all ancillary site works.
- 2.2. The applicant requested an extension of time of two months on the 10/06/2022 for the Planning Authority to decide on the application. This was request was confirmed on the 10/06/2022.
- 2.3. The application is accompanied by a Report on 'Archaeological Test Trenching' under evacuation Licence No. 07E0410 and dated May 2007. The report details nothing of archaeological significance was uncovered during test trenching and

¹ <https://maps.archaeology.ie/HistoricEnvironment/> accessed 14/08/22

recommends a previous proposal for the site could proceed without further archaeological intervention..

- 2.4. The Applicant submitted 'Unsolicited Information' on the 21/07/2022.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to refuse permission on the 11/08/2022 for the following reason-

The proposed development would be located in a rural area, where the settlement policy restrictions apply. The site is located within an area identified as a Rural Area Under Strong Urban Influence, where it is an objective that applicants shall satisfy the Planning Authority that the proposal constitutes a genuine rural generated housing need based on their social and / or economic links to a particular local rural area and must demonstrate that they comply with a category of housing need, as set out in Objective RP 5-4 of the County Development Plan 2022. On the basis of the information submitted, the Planning Authority is not satisfied that the applicants have demonstrated compliance with the policy or that there is a case for relaxing the settlement policy restriction. The proposed development would, therefore, contravene the stated objective RP 5-4 of the current County Development Plan, and would be contrary to the proper planning and sustainable development of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

- 4.1.1. The Planning Reports generally reflects the decision of the Planning Authority. The following is noted from the first report dated 08/06/2022-

- The site is located is located within an area identified as a Rural Area under Strong Urban Influence in the County Development Plan 2022. RP 5-4 applies.

- The applicants own a dwelling in Mallow
- The applicants circumstances do not fall within the requirements of Objective RP 5-4. Objective 5-10 considers exceptional health circumstances to live in a particular environment or close to family support in the rural area. Based on the case made it is considered an exemption would not be applicable in this case.
- Noting the proximity of the Blackwater River and the nature of development proposed SAC it is considered that significant impacts can be screened out.

The following is noted from the second report dated 09/08/2022-

- Refer to previous report, refuse application

The following is noted from the third report (A/SEP) dated 11/08/2022-

- The applicant has failed to demonstrate qualification under rural settlement housing policy.
- Following an extension of time unsolicited information has been received and the contents are noted.
- The recommendation for refusal is endorsed.

4.2. Other Technical Reports

- Area Engineer-
 - 07/06/22- revised layout required showing 80m sightlines with no obstruction within distance triangle
- Liaison Officer-
 - 10/08/22- No comment

4.3. Prescribed Bodies

- Irish Water- no objection subject to standard observations

4.4. Third Party Observations

- None

4.5. Representations

- Councillor Liam Madden

5.0 Planning History

- None recent

6.0 Policy Context

6.1. Cork County Development Plan 2022-2028 (CDP)

6.1.1. It is noted the application was originally lodged at a time when the previous County Development 2014-20 was in effect. The current County Development Plan 2022-2028 has been operative since 6th of June 2022. The application was refused by the Council on the 11th of August 2022.

6.1.2. Volume 1, Chapter 5 is titled 'Rural' and deals with such matters including houses in rural areas. Section 5.4.9 details-

“The policies in this section only apply to rural parts of the County outside defined development boundaries.”

The application site is located outside a defined development boundary and therefore the following Objectives are relevant-

- *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.

- **RP 5-10: Exceptional Health Circumstances**

Facilitate the housing needs of persons who are considered to have exceptional health circumstances that require them to live in a particular environment or close to family support in the rural area. The

application for a rural dwelling must be supported by relevant documentation from a registered medical practitioner and a qualified representative of an organisation which represents or supports persons with a medical condition or a disability.

This objective applies to all rural housing policy area types

6.2. National Planning Framework (NPF)

6.2.1. National Planning Objective 19 of the NPF outlines-

“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”

6.3. Ministerial Guidelines

6.3.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005) (SRHG)

- The appeal site is located in an area identified as under strong urban influence. In these areas the guidelines advise that the housing needs of the local rural community should be facilitated, but that urban generated housing demand should be met on zoned and serviced land within settlements (Appendix 3, Box 1).
- Section 3.2.3 deals with ‘Rural Generated Housing’ and ‘Persons who are an intrinsic part of the rural community’. It states-

“Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include.....people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.”
- Section 4.3 deals with ‘Assessing Housing Circumstances’ including recognition of “exceptional health circumstances”.

6.4. Natural Heritage Designations

- The site is located c. 250m east of the Blackwater River (Cork/Waterford) SAC (002170)

7.0 The Appeal

7.1. Grounds of Appeal

A first party appeal has been received from the Applicant. The grounds of appeal can be summarised as follows-

- The Planning Authority decision is flawed as it only refers to Objective RP 5-4 of the County Development Plan (CDP)
- There is a case for relaxation of settlement policy restrictions under objective RP 5-10.
- The Appellants then set out their children's exceptional health circumstances.
- They argue the application site is within the catchment area of their children's school (Ballygown National School, identified on google maps aerial photo submitted). This school supports the specific needs of their children and the exceptional health circumstance required to meet the criteria of Objective RP 5-10.
- The overriding reason behind the application is to provide a quiet and distraction free home environment for the children. Difficulties the children experience are set out.
- The appeal is accompanied by letters supporting this need from the 'Stepping Ahead Clinic' and 'The Sensory Room'.
- The applicants dwelling is not conducive to a quiet and peaceful environment as it is within a large housing development with constant noise and distraction.
- Objective RP 5-10 also facilitates applicants living close to family support. Marie has long established roots in the locality. Her maternal Grandmother

was born and reared adjacent to Ballygowan N.S. and Marie has relations residing in the locality.

- The applicants are committed to selling their current home to fund the construction of the proposed development.
- The Appeal is accompanied by the following-
 - Reports from Cork and Kerry Community Healthcare, Speech and Language Therapy Department dated 18/01/19 and 01/01/22.
 - A letter from Stepping Ahead Clinic dated 14/07/22
 - A letter from The Sensory Playroom dated 05/07/22
 - Copy of Incapacitated Child Tax Credit Claim Form 1 dated 18//04/19.
 - A letter from SOC Property concerning the intended sale of their existing house in Mallow
 - An aerial photograph showing locations of relations in area, the grandmothers home house and their children's national school.

7.2. Planning Authority Response

The planning authority's response to the grounds of appeal can be summarised as follows:

- The recommendation was made on the basis of the particulars of the application and the requirements of the settlement policy as set out in the Cork County Development Plan 2022.

7.3. Observations

- None

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the substantive issues to be addressed in this assessment are as follows-

- Rural Housing Need
- Appropriate Assessment

8.2. Rural Housing Need

8.2.1. The Planning Authority have refused this application because they consider on the basis of the documentation submitted, the Applicants have not demonstrated they comply with a category of housing need as set out in Objective RP 5-4 of the CDP. It is noted the report of the A/SEP dated 11/08/22 highlights the provision within the CDP for exceptional health circumstances under objective RP 5-10.

8.2.2. The site is located in a '*Rural Area under Strong Urban Influence...*' as designated in the CDP. Objective RP 5-4 of the CDP details these areas are under significant urban pressure for rural housing. 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 must demonstrate that they comply with one of five categories of housing need which I summarise as follows-

- a) Farmers including sons and daughters.
- b) Persons taking over the ownership and running of a farm on a full-time basis.
- c) Other persons working full-time in farming, forestry, inland waterway, or marine related occupations in the local rural area where they work and
- d) Persons who have spent over seven years, living in the local rural area
- e) Returning emigrants who spent over seven years, living in the local rural area 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.

- 8.2.3. It is clear from the contents of the submitted planning application and the 'Supplementary Application Form' that the applicants do not make their application on the basis of compliance with Objective RP 5-4.
- 8.2.4. In question 5.8 of the supplementary application form the Applicants set out their 'exceptional circumstances' that support their case for a dwelling at this rural location. This is accompanied by a letter of support from the Principal of the Ballygown National School and a letter from Riverside Montessori School in Doneraile. Both letters detailed the attendance of the Applicant's children at these schools.
- 8.2.5. On the 21/07/22 the Applicants also submitted Unsolicited Further Information. The Board may wish to consider the appropriateness of such unsolicited information to their determination having regard to the provisions of section 34 (3) of the Planning and Development Acts which details what a Planning Authority should have regard to when considering an application. Notwithstanding this, I note this information has also been submitted as part of the Applicant's ground of appeal.
- 8.2.6. Objective RP 5-10 of the CDP seeks to facilitate the housing needs of persons who are considered to have exceptional health circumstances that require them to live in a particular environment or close to family support in the rural area. This objective applies to all rural housing policy areas including those identified under RP 5-4. It is noted this objective is consistent with the provisions of section 4.3 of the Sustainable Rural Housing Guidelines 2005 (SRHG) which states-
- "planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support"*
- 8.2.7. Objective RP 5-10 and section 4.3 of the SRHG both require relevant documentation from a registered medical practitioner and a qualified representative of an organisation which represents or supports persons with a medical condition or a disability.

- 8.2.8. The Applicants make their case based on their children's diagnosed conditions. They have submitted reports from HSE Speech and Language therapists. These reports do not submit any justification for the Applicant's rural housing needs at the proposed location.
- 8.2.9. The Appeal also includes letters from a Speech and Language Therapist at Stepping Ahead Clinic and a Paediatric Occupational Therapist from The Sensory Playroom. The former details one child's need for ongoing support within a quiet environment with reduced distractions and ongoing input from additional teaching support. The latter recommends the benefits of a quiet environment, avoidance of noise pollution and undesirable attention for the ongoing development of the children.
- 8.2.10. It is my understanding that Speech and Language and Occupational Therapists are not 'registered medical practitioners' i.e. with the Medical Council of Ireland and instead benefit from their own registration body for 'Health and Social Care Professionals' i.e. CORU. Therefore the relevant documentation from a medical practitioner as required by Objective RP 5-10 and the SRHG has not been submitted. Furthermore the applicants have not submitted relevant documentation from a qualified representative of an organisation which represents or supports persons with a medical condition or a disability.
- 8.2.11. Notwithstanding the above and having considered the information submitted with the application and the appeal, I am not convinced the Applicants case has been appropriately justified in the context of exceptional health circumstances that require them to live in the particular environment of the application site including the proximity of Ballygown National School.
- 8.2.12. In the Appeal, the Applicants also seek to make the case they comply with Objective RP- 5-10 based on a requirement to live close to family support in the rural area. They identify the Applicants 'maternal grandmother home house' and other 'relations' c. 4.5km north east of the application site. As the Applicants have not appropriately demonstrated an exceptional health circumstance applies under Objective RP 5-10, I do not consider this family support necessary for further consideration. I have however, also considered this information against the provisions of Objective RP-4. I am satisfied the applicants still have not demonstrated their compliance with one of the listed categories of housing need.

8.2.13. Having considered all of the above, the Applicants have failed to demonstrate the proposal constitutes a genuine rural generated housing need based on social and / or economic links to the particular rural area via the criteria outlined in Objective RP 5-4 of the CDP and they have failed to demonstrate there are exceptional health circumstances that require them to live in the particular environment or close to family support in the rural area as outlined in Objective RP 5-10. The proposal is also considered contrary to the provisions of National Planning Objective 19 of the NPF which seeks to facilitate the provision of single housing in the countryside in areas under urban influence based on the core consideration of demonstrable economic or social need having regard to the viability of smaller towns and rural settlements and the provisions of the Sustainable Rural Housing Guidelines 2005.

8.2.14. The proposed development should be **refused**.

8.3. **Appropriate Assessment**

8.3.1. Having regard to-

- the nature and scale of the development proposed in this rural area,
- the separation distances of the site to the nearest European sites- the Blackwater River (Cork/Waterford) SAC (002170)
- the absence of any identifiable direct pathway between the appeal site and the European site,
- the proposal to treat and dispose of treated wastewater to ground via a percolation area and surface water to ground via five soakpits all within the site,

no Appropriate Assessment issues are considered to arise, and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

9.0 **Recommendation**

9.1. I recommend permission be refused for the following reason-

10.0 Reasons and Considerations

1. Having regard to:

- The site's location in a 'Rural Area under Strong Urban Influence' as designated in the Cork County Development Plan (2022-2028) an area which is under significant urban pressure for rural housing as detailed in Objective RP 5-4 of the Plan
- The absence of supporting documentary evidence on the file demonstrating a local housing need based on the Applicant's social and / or economic links to this particular rural area, in terms of compliance with the categories of housing need set out in Objective RP 5-4
- National Policy Objective 19 of the National Planning Framework (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 and
- 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

the Board is not satisfied on the basis of the information on the file that the applicant's proposal constitutes a genuine rural generated housing need as required by Objective RP 5-4 of the County Development Plan, or comes within the scope of either economic or social housing need criteria as set out in the National Planning Framework or that the applicants have demonstrated they are persons who are an intrinsic part of the rural community in accordance with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities. The proposed development, in the absence of any identified locally based need for a house at this location, would contravene policy objective RP 5-4 of the Cork County Development Plan (2022), 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.

Furthermore based on the information submitted the Board is not satisfied exceptional health circumstances requiring the applicants to live at the proposed site or close to family support in the rural area have been demonstrated as required by Objective RP 5-10 of the Development Plan. 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.

Adrian Ormsby
Planning Inspector

17th of August 2023