



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315505-23

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<b>Development</b>	Construction of a house, new site entrance and wastewater treatment unit
<b>Location</b>	Ballycotton, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	226297
<b>Applicant(s)</b>	Colin Archer
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Colin Archer
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> May 2023
<b>Inspector</b>	Eoin Kelliher

## **1.0 Site Location and Description**

1.1. The subject site is situated in the open countryside, circa 300m south of the village of Ballycotton, Co. Cork. The site comprises a roughly square field circa 0.25ha on elevated land overgrown with grass and bramble. The site is accessed via a private laneway extending from a small cul-de-sac estate of townhouses (Pairc na Gleann) on the edge of the village. The surrounding landscape is characterised by agricultural land with views of the village and the Celtic Sea to the north of the site.

## **2.0 Proposed Development**

2.1. Permission is sought to construct a single storey four-bedroom dwelling and new site entrance, install a wastewater treatment system, and carry out associated site works. The proposed dwelling has a conventional design with a painted render finish and pitched slate roofs externally. It is proposed to dispose of surface water by way of soakpits and sink a private well on the site.

## **3.0 Planning Authority Decision**

3.1. By Order dated 5<sup>th</sup> December 2022 Cork County Council decided to refuse permission for two reasons relating to:

1. The deficient size and capacity of the vehicular access road, which it considered would result in a traffic hazard, impede the creation of a safe turning bay for the Pairc na Gleann development, and set an undesirable precedent for future development on the access road.
2. The loss of local hedgerow, contrary to Policy Objective BE 15-5 of the County Development Plan, along a designated walkway, because of the widening of the access road that is likely required to render a safe means of access to the site.

## **3.2. Planning Reports**

3.2.1. Planning Reports

3.2.2. The Planning Officer's report, which was endorsed by a Senior Executive Planner, states the applicant appears to technically comply with the relevant rural housing policy but that additional detail of the family home is required.

3.2.3. The Planning Officer recommended refusing permission as the access laneway is currently insufficiently sized and consent to widen the laneway has not been obtained from the adjoining landowners. The loss of hedgerow / biodiversity associated with the required widening of the laneway and concerns raised by the Area Engineer regarding the creation of a hammerhead at the end of the Pairc na Gleann estate road were also considered grounds for refusing permission.

#### 3.2.4. Other Technical Reports

Area Engineer: Notes that third-party submissions highlight that access to the site is not possible and states if this is the case the application is premature and should not be granted. Also states that there is no hammerhead at the end of the Pairc na Gleann estate road and if access is to be provided via the estate road improvements to the estate road would be required.

### 3.3. **Third Party Observations**

Third-party submissions were made by Alan Dunne and Tim Murray indicating that they own sections of the laneway serving the site. Alan Dunne states the eastern half of the north-south section of the laneway is in his family's ownership and is unavailable for development. He also states the laneway has always been used exclusively for agricultural purposes, was never intended for residential use and is unsuitable for same. Tim Murray states he owns the east-west section of the laneway and that he has not consented to any upgrade works to the lane. He also states the lane is merely an agricultural lane and has never had a right of way on it for residential purposes.

### 3.4. **Prescribed Bodies**

None.

## 4.0 **Planning History**

P.A. Reg. Ref. 22/5768: Planning application for a new dwelling for Colin Archer withdrawn on 17<sup>th</sup> August 2022.

P.A. Reg. Ref. 13/5745: Permission granted 10<sup>th</sup> December 2013 for a new dwelling for Mary and Michael O'Brien. This permission was not acted upon.

## 5.0 Policy Context

### 5.1. Cork County Development Plan 2022

Under the current County Development Plan the subject site is located:

- On land adjoining the development boundary of Ballycotton that is not zoned.
- Within a Rural Area Under Strong Urban Influence.
- Within a High Value Landscape.

The following policy is of relevance to this appeal:

**RP 5-4:** States the rural areas of the Greater Cork Area (outside Metropolitan Cork) and the Town Greenbelt 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 by demonstrating compliance 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 5-22:** Regarding the design and landscaping of new dwelling houses and replacement dwellings in rural areas.

**RP 5-23:** Regarding servicing single houses (and ancillary development) in rural areas.

**GI 14-9:** Regarding the protection of the visual and scenic amenities of the built and natural environment.

**BE 15-6:** Regarding the protection and enhancement of biodiversity in the development management process and when licencing or permitting other activities.

Section 3.12 of Appendix 4 of the Plan sets out general and specific objectives for Ballycotton. **Specific Objective U-01** seeks to develop and maintain an amenity walk incorporating the laneway serving the subject site and extending as far as the farmstead the laneway originally served circa 175m south of the subject site.

## 5.2. National Planning Framework

**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 any by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant local communities.

**Policy 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 villages.
- 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.

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

These guidelines expanded on the rural housing policy framework set out in the National Spatial Strategy (2002) in place at the time and provide that:

- People who are part of the rural community should be facilitated by the planning system in all rural areas, including those under strong urban-based pressures,
- Anyone wishing to build a house in rural areas suffering persistent and substantial population decline will be accommodated, and
- The development of the rural environs of major urban areas, including the gateways and hubs identified in the NSS and county and other larger towns over 5000 in population needs to be carefully managed in order to assure their orderly development and successful functioning into the future.

### 5.4. **Natural Heritage Designations**

Ballycotton Bay Special Protection Area (Site Code 004022) is located circa 370m north of the site.

### 5.5. **Environmental Impact Assessment**

Having regard to the residential nature and small scale of the development and the absence of any significant environmental sensitivity in the vicinity of the site, there is

no real likelihood of significant effects on the environment arising from the proposed 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**

The grounds of this first-party appeal can be summarised as follows:

- The Council previously permitted a dwelling on the site (P.A.reg. ref. 13/5745) with the same access arrangements as those proposed under the current application.
- The third-party submissions on the application were of a legal nature and relate to a civil matter. The Development Management Guidelines (2007) confirm that the planning system is not the mechanism for resolving disputes about title to land or premises or rights over land.
- The Council's decision focussed on the widening of the existing laneway serving the site; fair consideration should be given to providing access via the existing footprint of the laneway.
- It was unreasonable for Cork County Council to retrospectively raise traffic concerns regarding the turning bay for the Pairc na Gleann estate when the laneway serving the subject site preceded the development of the estate.
- The applicant currently accesses the subject site by vehicle without difficulty; the private use of the laneway would not generate significant volumes of traffic and vehicles would travel at low speeds due to the residential nature of the proposal.
- The appellant is unaware of any technical standards for private laneways, and no technical standards have been referred to in the Area Engineer's report; refusing permission on this unsubstantiated basis is wholly erroneous.
- It was unreasonable of the Council to determine that the proposed development would endanger public safety when the lands in question are not public.
- The proposed development requires minimal interventions to existing vegetation to facilitate a genuine rural housing need. It is not proposed to widen or remove

vegetation along the laneway; the submitted site plan indicated that the existing laneway is to be upgraded to the area engineer's requirements.

- The laneway serving the site is designated as an amenity walk in the Cork County Development Plan 2022 (Objective U-01); the Council's opinion that the site is landlocked is contrary to its own policy.
- The use of the laneway to serve the proposed development would not impede the future delivery of an amenity walk.
- The appellant states he fully complies with Policy Objective RP 5- 4 in respect of rural housing need, having spent over seven years living in the rural area of Ballycotton in which he proposes to build his first home for the permanent occupation of his family, on lands previously owned by his great grandparents.

## 6.2. **Planning Authority Response**

Refers to its technical reports and states it has no further comment to make.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

7.1. I consider the main issues in this appeal are as follows:

- Rural Housing Need
- Vehicular Access
- Wastewater Treatment (New Issue)
- Impacts on Hedgerows and Biodiversity
- Appropriate Assessment

## 7.2. **Rural Housing Need**

7.2.1. The applicant currently resides in a house in the Pairc na Gleann estate to the north of the subject site with his wife and two children, which he states he purchased ten years ago and is no longer suitable for his family needs. His original family home comprises a bungalow in the townland of Ballygeany, circa 2km west of the subject



site. He attended national school in Ballycotton and secondary school in Middleton, and he now works in the Defence Force's naval base in Cobh. I note the Planning Officer considered that the applicant technically complies with the County Development Plan's rural housing policy but that additional information on the family home / landholding is required.

7.2.2. In his appeal the applicant states he submitted all details necessary to demonstrate he has a genuine rural housing need and complies with Policy RP 5-4(d), having spent over seven years living in the rural area of Ballycotton in which he proposes to build his first home for the permanent occupation of his family on lands previously owned by his grandparents. In this regard I note a letter from the Board of Management of Scoil Realt na Mara N.S. submitted with the planning application confirming that the applicant attended the school for eight years spanning 1989 to 1997, with a home address at Ballygeany, Ballycotton.

7.2.3. Having regard to the foregoing I am satisfied that the applicant has strong social links to the Ballycotton area. I would question, however, whether the applicant's current circumstances give rise to a rural generated housing need in a rural area, particularly as he works in Cobh and his social needs can be met whilst living in the village. Furthermore, the applicant would be building his second home for permanent occupation, having previously purchased and lived in a house within the village for the last ten years. In this respect the applicant does not fully comply with the requirements of Policy RP 5-4(d) and, as such, I am not satisfied that the proposal constitutes a genuine rural housing need. The proposed development would, therefore, contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the provision of public services and infrastructure. I recommend that planning permission be refused in this respect.

### 7.3. **Vehicular Access**

7.3.1. The crux of the Planning Authority's decision relates to whether the laneway serving the site can provide safe vehicular access and egress. Presently the laneway serves agricultural land including 2 no. field entrances at its southern end adjoining the entrance to the subject site. In its current state the laneway can accommodate one

vehicle only and is unsurfaced. It has an L-shaped alignment running circa 45m east to west from the Pairc na Gleann estate road and circa 100m north to south to the subject site.

- 7.3.2. The laneway is owned by third parties. The applicant indicated a vehicular right of way to the site over the laneway on the site location map submitted with his application. A solicitor's letter attached to the appeal states he can access the site he proposes to purchase via the existing laneway but does not provide any detail regarding the right of way shown on the site location map.
- 7.3.3. Whilst the nature of the right of way is unclear, it is evident it is not within the applicant's power to upgrade the laneway in accordance with the Area Engineer's requirements, as indicated on the submitted site layout drawing. In this respect I note letters of consent from the owners of the laneway were not submitted with the application. Consequently, the applicant may not be able to resurface the laneway or alter it so that two vehicles can pass one another. The latter issue is particularly problematic from a road safety perspective as vehicles using the laneway may reverse onto the estate road at Pairc na Gleann when there is an oncoming vehicle on the laneway. As the proposed development would intensify vehicular traffic on the laneway it would, therefore, generate a traffic hazard that would endanger public safety. The applicant argues the Area Engineer did object to the proposed access arrangements for the previously permitted dwelling on the site. However, the Board should note it is not bound by the previous decisions of the Planning Authority. Accordingly, I recommend that planning permission also be refused in this regard.
- 7.3.4. I concur with the applicant that it would be unreasonable to refuse permission on the grounds that the proposed development would impede the creation of a safe turning bay for the adjoining Pairc na Gleann estate. The requirement for a turning bay at this location should have been addressed when permission for the estate was granted and it would be unreasonable to pass this burden onto a third-party at this juncture.

#### 7.4. **Wastewater Treatment (New Issue)**

- 7.4.1. The submitted Site Characterisation Form indicates the site is suitable for a septic tank but cannot accommodate the required length of percolation trenches. A

packaged secondary treatment system (Euro-Bio 6) is proposed instead with a percolation area comprising 50 linear metres of percolation trenches.

7.4.2. The proposed dwelling comprises 4 no. double bedrooms. Accordingly, a P.E. of 6 no. persons should be catered for as per Table 3.2 of the EPA's 'Code of Practice for Domestic Waste Water Treatment Systems (P.E. ≤ 10)' (March 2021). The submitted Site Characterisation Form incorrectly states the P.E. of the dwelling would be 4 no. persons; the design of the proposed percolation area is based on this assumption. A larger percolation area comprising 72 linear metres of percolation trenches is required for a P.E. of 6 (Table 10.1 of the CoP refers).

7.4.3. Whilst it should be possible to address this matter within the confines of the site boundary, based on the information before me I am not satisfied that the proposed DWWTS has been designed to cater for the proposed development and would not be prejudicial to public health. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal, it may not be considered necessary to pursue the matter.

## 7.5. Impacts on Hedgerows and Biodiversity

7.5.1. As the proposed development does not involve the widening of the laneway serving the site there would be no adverse impacts on hedgerows or biodiversity along the laneway. I also note that objective BE 15-6 seeks to encourage the retention of, *inter alia*, hedgerows of high natural value. The north-south section of the laneway is bounded by a hedgerow on its western side only. On its eastern side it is bounded by a grassed earthen bank of limited biodiversity value. Had widening the laneway been proposed, a net biodiversity gain could have been achieved by planting native tree and hedge species within the site. Accordingly, the Planning Authority's second reason for refusal should be disregarded.

## 7.6. Appropriate Assessment Screening

Having regard to the modest nature and scale of development, which includes an on-site domestic wastewater treatment system and surface water soakaways, and in the absence of any hydrological or other connections to 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

I recommend permission be refused.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within an area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Cork County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the proposed development at the end of a narrow unsurfaced laneway currently serving agricultural land, the length and alignment of the laneway and the additional traffic movements that the proposed development would generate on the laneway, and on the basis that the application has not been made by a person who has sufficient legal interest in the laneway, or the approval of the person(s) who has such sufficient legal interest, to upgrade the laneway, it is considered that the proposed development would endanger public safety by reason of traffic hazard.
3. Having regard to the population equivalent of the proposed four-bedroom dwelling as defined by the EPA’s ‘Code of Practice for Domestic Waste Water Treatment Systems (P.E. ≤ 10)’ (March 2021), and the restricted nature of the site, the information provided to the Board is insufficient to be satisfied that the proposed wastewater treatment unit has been designed to the required standards and would not be prejudicial to public health.

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.

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Eoin Kelliher  
Planning Inspector

7<sup>th</sup> June 2023