



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317526-23

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<b>Development</b>	Construction of a house, garage, wastewater treatment unit and associated works
<b>Location</b>	Coolkirky, Riverstick, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	22/6091
<b>Applicant(s)</b>	Darragh McCarthy
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mr. Carroll Daly, Mr and Mrs Con Daly, Mr. Tim Daly and Mr. Ernest Beamish
<b>Observer(s)</b>	Mr. Timothy Daly Jnr.
<b>Date of Site Inspection</b>	9 <sup>th</sup> November 2023
<b>Inspector</b>	Gary Farrelly

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.26 hectares and is located within the townland of Coolkirky, which is approximately 1km north of the village of Riverstick, County Cork. The site is bounded by agricultural grassland to the south, east and north, beyond which is the Local Road L-6490. A private road is located to the west of the subject site which serves an existing dwelling. A further 3 no. dwellings are located on the western side of this private road. The regional road R-600 is located approximately 150 metres to the east of the subject site.
- 1.2. The topography of the site slopes gently downwards from the western to eastern boundary with the surrounding lands sloping further downwards towards the River Stick to the east of the site.

## 2.0 Proposed Development

- 2.1. Permission is sought to construct a dwellinghouse, domestic garage, wastewater treatment unit and associated works. The proposed dwellinghouse is to be located approximately 100 metres south of the L-6490 public road.
- 2.2. The design is proposed to be two storey to a ridge height of 8.3 metres. The total floor area of the dwelling (including the car port and garage) will measure 311.8sqm. External finishes will comprise of part stone and part render finish to the walls with blue/black natural slate finish to the roof.
- 2.3. Access is proposed to be taken off the L-6490 public road and a c. 80 metre long driveway is proposed to serve the proposed dwelling. Water supply is proposed to be via a domestic well. A site characterisation form has been submitted which has recorded an onsite subsurface percolation value of 64.39 min/25mm.

## 3.0 Planning Authority Decision

### 3.1. Decision

Cork County Council (The Planning Authority) decided to grant permission by Order dated 13<sup>th</sup> June 2023, subject to 15 no. mainly standard conditions including roadside

set back treatment, maintenance of sightlines, occupancy condition and financial contribution condition.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Area Planner's report assessed the development in terms of rural housing need, pattern of development, planning history, design and visual impact and required sightlines. Further information was requested in relation to the illustration of sightlines on the site layout plan, entrance design, surface water drainage and landscaping requirements. Clarification further sought due to incorrect sightlines and further drawings of the entrance. Final report recommended a grant of permission.

#### **3.2.2. Other Technical Reports**

- Area Engineer's Report (dated 01/11/22, 21/04/23 and 12/06/23) – First report considered that sightlines were not shown correctly on site layout plan, there were out of date surface water calculations and an out of date site assessment and further information was sought. Second report considered the ditch removal to be excessive destroying rural aspect of the area and clarification was sought. Third report recommended permission be granted subject to conditions.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

A third party submission was received which raised issues in relation to a misleading application, conflict with the parent permission onsite, conflict with the development plan, section 28 guidelines and national planning framework, road safety issues and contrary to proper planning and sustainable development of the area.

## 4.0 Relevant Planning History

### PA Ref. 21/5697 / ABP Ref. 311674-21

Darragh McCarthy sought permission for a house, garage and wastewater treatment system. Refused by ABP after third party appeal to Cork County Council decision to grant. Reason for refusal was that ABP considered that no demonstratable economic or social need was demonstrated and that the development would exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing which would erode the rural and landscape character of the area and which would lead to increased demands for the uneconomic provision of public services and facilities.

### Adjoining Site

### PA Ref. 23/4713

Killian McCarthy seeking permission for a house, garage and wastewater treatment system. Further information was requested in June 2023 and responded to in December 2023. Decision was due 8<sup>th</sup> January 2024, however application was withdrawn.

### Original Landholding

### PA Ref. 01/5976

Permission granted, subject to conditions, to Gerard McCarthy to construct a dwellinghouse and garage on site to the east of the subject site.

*Condition 5: One dwelling house only shall be constructed on the entire site shown on the site location map lodged with the Planning Authority 1.11.01.*

*Condition 6: Further subdivision of this site shall not take place.*

*Reason: To control the density of development to a level consistent with the amenities of the area.*

*Condition 24: No further housing development shall be carried out on lands outlined on map lodged with the Planning Authority on 26<sup>th</sup> November 2001, for a period of 5 years from the date of grant of this permission. Before development commences provision to this effect shall be embodied in an agreement between the Landowner and the Planning Authority pursuant to section 38 of the Local Government (Planning and Development) Act 1963.*

PA Ref. 05/1364

Permission granted, subject to conditions, to Gerard McCarthy to construct stables.

## 5.0 Policy Context

### 5.1. Development Plan

- Cork County Development Plan 2022-2028

#### Section 5.3 Rural Housing Guidelines

Subject site is located within a 'Rural Area Under Strong Urban Influence' where the characteristics are a 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.

#### 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:

(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.

## RP 5-22: Design and Landscaping of New Dwelling Houses and Replacement Dwellings in Rural Areas

(a) Encourage new dwelling house design that respects the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.

(d) Require the appropriate landscaping and screen planting of proposed developments by retention of existing on-site trees hedgerows, historic boundaries, and natural features using predominantly indigenous/local trees and plant species and groupings.

## RP 5-24: Ribbon Development

Presumption against development which would contribute to or exacerbate ribbon development.

## Objective GI14-9 Landscape

(e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

## 5.2. **National Policy**

- Climate Action Plan 2023
- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

## National Policy Objective (NPO) 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;

## 5.3. **Regional Policy**

- Regional Spatial and Economic Strategy for the Southern Region

#### 5.4. **National Guidance**

- Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

#### 5.5. **Natural Heritage Designations**

The subject site is not located within any designated site. The nearest designated sites are the Cork Harbour Special Protection Area (SPA) (Site Code 004030) and the Owenboy River proposed Natural Heritage Area (pNHA) which are located approximately 7km east of the subject site. The subject site is also located approximately 12km north of the Sovereign Islands Special Protection Area (SPA) (Site Code 004124).

#### 5.6. **Environmental Impact Assessment (EIA) Screening**

Having regard to the nature, size and location of the proposed development, comprising the construction of a single one off house in a rural area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Refer to Appendix 1 regarding this preliminary examination.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

A Third-Party Appeal was lodged to the Board on 6<sup>th</sup> July 2023 opposing the Planning Authority's (PA) decision. The grounds of appeal can be summarised as follows:

- No change in the circumstances relating to the criteria and guidance documents referenced in the Board Order of 31164-21. Request consistent decision making.
- Oral hearing is requested.

- The cumulative impact with further application from applicant's brother has not been taken into account.
- Enforcement complaint regarding unauthorised development on this site.
- Application form is misleading in terms of valid planning applications previously made, 01/5976 and 05/1364 are not referenced, and application should be invalidated or refused.
- The proposed development will result in an over intensification of use in an unserviced area and circumstances have not changed since previous refusal reasons onsite.
- Considers the development will result in a traffic hazard and questions why the further information response did not comply with the PA's request. Access will facilitate another independent site.
- No thorough or reliable analysis of the impact of ribbon development. Application 22/06493 referenced which was refused due to further infill/ribbon development. Requests consistency in decision making.
- The proposed development conflicts with the original permission on site S/01/5976 and conditions stating that further development / subdivision shall not take place.
- A further planning application has been lodged on the landholding.

## 6.2. Applicant Response

The Applicant's planning consultant responded to the grounds of appeal as follows:

- The applicant's housing need is in accordance with Section 28 Guidelines and the provisions of the Development Plan which addresses NPO19. With regards to previous appeal, it is considered that this decision was misinformed as the CDP came into effect between the period of the Inspector's report and the Order of the Board.
- Requests the Board to take into account recent precedent cases.
- The previous Board's decision did not consider the conditions attached to a previous permission onsite as a reason for refusal. Condition 24 of same



permission is raised highlighting a 5 year time period for restriction of development on the landholding. Changes in rural housing policy are also outlined.

- Development meets requirements of current road safety standards.
- There are no lands zoned in Riverstick for housing development.

### 6.3. **Planning Authority Response**

The Planning Authority (PA) considered all matters dealt with in previous reports and had no further comment to make.

### 6.4. **Observations**

Mr. Timothy Daly Jnr submitted an observation outlining that unauthorised works have commenced onsite and a number of photographs were provided.

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, after an inspection of the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues to be considered in this appeal are as follows:

- Rural Housing Policy
- Planning History
- Siting & Layout
- Capacity of the Area
- Traffic Safety & Biodiversity (New Issue)
- Other Issues
- Appropriate Assessment (AA) Screening

7.2. The Board should note that the subject appeal differs from what was previously before the Board under ref. 311674-21. It was previously proposed to access the site via a cul-de-sac private road to the west of the site which served an existing dwelling. The

proposed development now seeks to create a new access off the L-6490 public road and to include a circa 80 metre long driveway through the centre of the field.

### **Rural Housing Policy**

- 7.3. The site is located within a 'Rural Area Under Strong Urban Influence' and I note that the PA concluded that the Applicant demonstrated compliance with objective RP5-4 of the CDP on the basis that he was born and reared in the area and had lived in the area all of his life.
- 7.4. The details submitted by the Applicant to support his rural housing need are as follows:
- The site is owned by the applicant's father; Gerard McCarthy.
  - The Applicant has lived in Coolkirky since 2002. Previously lived in Glenny, Riverstick from 1989 to 2002.
  - Attended Scoil Mhuire nGrast, Belgooly from 1994 to 2002 and Kinsale Community School from 2002 to 2008.
  - The Applicant is in full time employment within the family business GMC Construction Ltd, which is located at Coolkirky, Riverstick.
  - The Applicant does not own or has ever owned a residential property, has never received planning permission for a residential property and has never built a home in the rural area.
- 7.5. I note the previous reason for refusal of application ref. 311674-21 where the Board considered that the proposed development was contrary to rural housing policy set out in the development plan and National Policy Objective 19 of the National Planning Framework. I note the Appellant has stated that there have been no policy changes since this decision. However, I note the response from the Applicant's planning consultant in which they consider the decision to be misinformed as the current CDP was adopted between the date of the Inspector's report and the Board's Order.
- 7.6. I note that paragraph 5.3.6 of the CDP states the following: "*in the absence of new guidelines it is not feasible to reconcile the approach of the National Planning Framework (NPF) based on having a demonstratable economic or social need to construct a house in the rural area, with the detailed approach set out in the current guidelines issued in 2005, which remain in force, which advocate that people who are*

*part of the rural community should be accommodated there. The rural housing policy of the plan is therefore based on the 2005 Guidelines.”*

- 7.7. Notwithstanding this paragraph of the CDP, I note that the CDP was adopted in 2022, and therefore, after the publication of the NPF (and NPO19). I note that the PA considered that the Applicant complied with the criteria outlined under objective RP5-4 of the CDP. Having regard to the documentation on file, I am satisfied that the Applicant complies with the rural housing criteria outlined under said objective.

### **Planning History**

- 7.8. I note that the Appellant considers that permission cannot be granted as it contravenes conditions attached to the previous permission ref. 01/5976. I also note the previous Inspector’s report for appeal ref. 311674-21 where refusal was recommended on the basis that the development would contravene Conditions 5 and 6 of application ref. 01/5976. Furthermore, I note the response from the Applicant’s consultant who references condition no. 24 of ref. 01/5976 which restricted development on the landholding for a period of 5 years.
- 7.9. Notwithstanding the above, it is my view that a contravention of a condition from a previous permission granted in 2002 cannot pre-determine the result of any subsequent planning application to carry out development on the subject site. Therefore, I consider that contravention of such conditions are not a basis on which an application for permission may be refused. Furthermore, I note that this was not included as a reason for refusal on the Board’s Order for 311674-21.

### **Siting & Layout**

- 7.10. As stated under paragraph 7.2 above, this application now proposes to access the site from the public road to the north via a c. 80 metre long driveway through the centre of an agricultural field. The proposed dwelling is set back approximately 100 metres from the public road. I note the Appellant’s concern that this layout lends itself to further subdivisions of the site.
- 7.11. I have significant concerns with the siting and layout of the proposed development. It is my view that the creation of a c. 80 metre long driveway through the centre of a field is unsustainable and will result in a substantial loss of agricultural lands. Furthermore,

the creation of this new driveway may provide potential for further development opportunities.

- 7.12. I have no significant concerns with the proposed design of the dwelling. Having regard to the topography of the site, I consider that it will not result in an adverse impact on the visual amenities of the area.

### **Capacity of the Area**

- 7.13. The Appellant states that the proposed development will result in an over intensification of use in an unserviced area. I note that as part of the reason for refusal of appeal ref. 311674-21 the Board considered that the proposed development would exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing in this location, having regard to, inter alia, the pattern of development in the vicinity, and would lead to increased demands for the uneconomic provision of public services and facilities, where these are neither available nor proposed in the CDP.
- 7.14. I do not see any reason to reach a different conclusion. I note that there are a total of c. 11 dwellings within approximately 250 metres of the subject site, 5 of which are accessed off the Regional Road R-600 to the west of the site. It is my view that the immediate area is characterised by a high density of one-off housing.
- 7.15. I note the PA considered that the proposed development “*would reinforce a scattered pattern of development in the area and would not conflict with Objective RP 5-24 with regards to ribbon development*”. I note that there are 5 existing houses all accessed off the L-6490 public road within 250 metres of the proposed entrance location. Having regard to this, I consider the proposed development does not represent infill development and will contribute and exacerbate a scattered pattern of development in the area.
- 7.16. Overall, I consider that the rural area is characterised by an excessive amount of one-off dwellings and does not have capacity to absorb further development. The proposed development would exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing in this unzoned rural area which would lead to an erosion of the rural and landscape character of the area which would lead to increased demands for the uneconomic provision of public services and facilities, where these are neither available nor proposed in the CDP.

### **Traffic Safety & Biodiversity (New Issue)**

- 7.17. I note the Appellant's concerns that the proposed development will result in a traffic hazard. I note the PA's Area Engineer had no objection to the development after the further information response which provided details of sightlines achievable including a modification to the existing roadside boundary.
- 7.18. Having inspected the site and considering the low trafficked nature of the road and sightlines stated to be achievable, I am satisfied that the proposed development would not result in a traffic hazard or obstruction of road users.
- 7.19. Notwithstanding this, it is my view that in order to achieve the required sightlines this will require the removal of a significant amount of roadside hedgerow. I note that this was a concern that the PA's engineer originally had. The submitted 'site entrance sight lines' plan indicates approximately 60 metres of hedgerow to be removed to the east of the entrance. Notwithstanding the replacement, I consider the removal in the first instance to be contrary to objective GI14-9(e) of the CDP and would further erode the natural heritage and rural character of the area. Additionally, I do not consider this to be justifiable having regard to the availability of other frontage and potential access to the site. The Board should note that my concerns regarding the hedgerow removal is a new issue and they may wish to seek the views of the parties, however, having regard to the other substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

### **Other Issues**

- 7.20. I note the Appellant questions the procedures adopted by the PA, including the returning of submissions. I note that the further information and clarification were not deemed significant by the PA and therefore the Appellant should note that submissions cannot be accepted in accordance with legislation. I am satisfied with the procedures adopted by the PA in this regard.
- 7.21. I note the concerns of the Appellant and Observer with regards to unauthorised development on the site. Both parties should note that the matter of enforcement falls under the jurisdiction of the Planning Authority.

## **Appropriate Assessment (AA) Screening**

- 7.22. The subject site is not located within any European Site. The site is located approximately 7km west of the Cork Harbour Special Protection Area (SPA) (Site Code 004030). Having viewed the Environmental Protection Agency AA Mapping Tool, I note that there are no hydrological connections or other pathways to this European Site.
- 7.23. The subject site is also located approximately 12km north of the Sovereign Islands Special Protection Area (SPA) (Site Code 004124). The River Stick is located approximately 100 metres to the east of the subject site which is hydrologically connected to SPA 004124. I note that the subject site is not hydrologically connected to the River Stick.
- 7.24. Having regard to the nature and scale of the proposed development and to the absence of any hydrological connection or other pathway to any European Site and to the separation distance, I consider that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on the Natura 2000 network, in view of the said sites' conservation objectives. An appropriate assessment is not, therefore, required.

## **8.0 Recommendation**

I recommend that planning permission should be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the pattern of development within the vicinity of the site, it is considered that the proposed development would exacerbate and consolidate a trend towards the establishment of an excessive density of haphazard rural housing in an unzoned rural area which would lead to an erosion of the rural and landscape character of the area and which would lead to increased demands for the uneconomic provision of public services and facilities, where these are neither available nor proposed in 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.

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Gary Farrelly  
Planning Inspector

23<sup>rd</sup> January 2024

## Appendix 1

### Form 1 - EIA Pre-Screening [EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	317526		
<b>Proposed Development Summary</b>	Construction of single dwelling, domestic garage and wastewater treatment unit		
<b>Development Address</b>	Coolkirky, Riverstick, Co. Cork		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (that is involving construction works, demolition, or interventions in the natural surroundings)	<b>Yes</b>	<input checked="" type="checkbox"/>	
	<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	<input checked="" type="checkbox"/>		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>			<b>Conclusion</b>
<b>Yes</b>	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> <li>Class 10(b)(i) Construction of more than 500 dwelling units</li> <li>Class 15 Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have</li> </ul>	Development is for a single dwelling unit.
			<b>Conclusion</b>
			Proceed to Q.4



		significant effects on the environment, having regard to the criteria set out in Schedule 7.		
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4. Has Schedule 7A information been submitted?		
No	<input checked="" type="checkbox"/>	Preliminary Examination required
Yes		Screening Determination required

## Form 2 - EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	317526	
<b>Proposed Development Summary</b>	Construction of single dwelling, domestic garage and wastewater treatment unit	
<b>Development Address</b>	Coolkirky, Riverstick, Co. Cork	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b> Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The development is for a single dwellinghouse within a rural area. Localised construction impacts expected, topsoil removal etc.</p> <p>Wastewater treatment unit proposed; subsurface percolation value calculated at 64.39min/25mm in accordance with EPA Code of Practice.</p>	No
<p><b>Size of the Development</b> Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>The development site measures 0.26 hectares. The size of the development is not exceptional in the context of the existing environment.</p> <p>There is no real likelihood of significant cumulative effects with existing and permitted projects in the area.</p>	No

<p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>		
<p><b>Location of the Development</b> Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The site is not located within any ecologically sensitive site and is approximately 7km from the Cork Harbour Special Protection Area (SPA) (Site Code 004030) and the Owenboy River proposed Natural Heritage Area (pNHA).</p> <p>A section of roadside hedgerow is proposed to be removed.</p>	<p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p><b>EIA not required.</b></p>	<p><del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del></p> <p><del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del></p>	<p><del>There is a real likelihood of significant effects on the environment.</del></p> <p><del>EIAR required.</del></p>

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_