



An
Bord
Pleanála

Inspector's Report

ABP-318254-23

Development	Construction of a new dwelling, vehicular entrance and all ancillary site works
Location	Coolnacreena, Cappoquin, Co. Waterford
Planning Authority	Waterford City & County Council
Planning Authority Reg. Ref.	23179
Applicant(s)	Monika Dodekova & Stanislav Dudek
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Monika Dodekova & Stanislav Dudek
Observer(s)	None
Date of Site Inspection	15 th March 2024
Inspector	Bernard Dee

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.365ha is located approximately 3km NE of the village of Cappoquin in an upland area characterised by a dispersed settlement pattern, farms building, fields and forests. There are no dwellings in close proximity to the application site.
- 1.2. The appeal site is located at a crossroads with the L5055 (secondary road) running north-south defining the eastern boundary of the appeal site and a private lane defining the southern boundary of the site. The western and northern boundaries are open fields.

2.0 Proposed Development

- 2.1. It is proposed to construct a single storey, four bedroom dwelling of contemporary design, new vehicular entrance to the south (altered to the east onto the L5055 on foot of a Further Information request), boundary treatment, landscaping and all ancillary works.
- 2.2. The proposed house has a T-plan format and a maximum footprint of 19.5m in length and 11.3m in depth and a maximum ridge height of 5.5m. The GFS of the proposed dwelling is stated to be 164m². No garage is proposed.
- 2.3. Water supply for the dwelling is to be supplied by a domestic well and an on-site waste water treatment system is also proposed. A soakpit is proposed to collect surface water runoff.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was refused on 18th September 2023 for one reason:

Having regard to the location of the site within an Area Under Strong Urban Influence as identified in the Waterford City and County Development Plan 2022-2028, where housing is restricted to persons demonstrating local need in

accordance with Policy H28 of the Plan, it is considered that the applicant does not come within the scope of the housing need qualifying criteria for a rural one-off dwelling at this location.

In addition, having regard to the National Policy Objective 19 of the National Planning Framework which, for rural areas under urban influence 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, it is considered that the applicant has not demonstrated compliance with National Policy Objective 19.

The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development, set an undesirable precedent, be contrary to the Waterford City and County Development Plan 2022-2028 and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points raised in the Planner's Report on file are as follows:

- The application site is located within an Area Under Strong Urban Influence as identified in the Waterford City and County Development Plan 2022-2028 and the applicants will need to demonstrate compliance with the local housing need criteria set down in Section 7.11.2 of the Development Plan.
- The applicants currently rent a house approximately 700m from the application site and have submitted extensive documentation regarding their living in the area for the last ten years including work history and involvement in the local community.
- The layout, form and scale of the proposed dwelling are appropriate to its 'Low Sensitive' class of landscape designation in the Development Plan.
- The L5055 (secondary road) is a designated 'Scenic Route' but the proposed landscape works are noted in this regard as a mitigation regarding potential visual impact.

- Access is proposed via the private laneway to the south of the application site and not onto the L5055 (secondary road).
- There is no issue with the proposed methods of servicing the site in terms of water supply, wastewater treatment and surface water disposal.
- Further Information was sought on 27th July 2023 in relation to demonstrating local need and the relocation of the vehicular access from the private lane to the L5055 (secondary road).
- Neither EIA nor AA is required in relation to the proposed development.
- The Planner's Report expressed satisfaction with the response to Further Information which was received on 11th August 2023 in relation to the vehicular access relocation but deemed the response regarding demonstrating local housing need inadequate and recommended a refusal of permission on this single issue.

3.2.2. Other Technical Reports

- No internal reports are attached to the appeal file.

3.2.3. Prescribed Bodies

- No reports from prescribed bodies are attached to the appeal file.

3.2.4. Observations

- Two submissions were made in relation to this application and following the receipt of Further Information (relocation of vehicular entrance) both observers were happy with the revised proposal for a dwelling on this site.

4.0 Planning History

4.1. On the Appeal Site

- Ref. 22485 – an application for the construction of a two-storey house, garage, new entrance and wastewater treatment system and all ancillary site works was deemed withdrawn as no response to a Further Information request was received within the six month period.

4.2. In the Vicinity of the Appeal Site

- Ref. 22482 – an application on a site immediately west of the current appeal site for the construction of a two-storey house, garage, new entrance and wastewater treatment system and all ancillary site works was deemed withdrawn as no response to a Further Information request was received within the six month period.

5.0 Policy and Context

5.1. Development Plan

The Waterford City & County Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is situated and came into effect on 19th July 2022. Set down below are the policies and objectives contained in the Development Plan relevant to this appeal. National and Regional policies are primarily set down in Chapters 2 and 3 of the Development Plan to which I draw the Board's attention.

The appeal site is located in 'white lands' which are classed as being zoned as agricultural lands.

Volume 1: Written Statement

2.10.1 Rural Area under Strong Urban Influence

The key Development Plan objectives in this area are, on the one hand, to facilitate the housing requirements of the local rural community, subject to satisfying site suitability and technical considerations, whilst on the other hand directing urban generated development to areas zoned and designated for housing in the adjoining villages and rural settlement nodes. We will manage sustainable growth in 'Rural Areas under Urban Influence' and facilitate the provision of single houses in the countryside based on the core considerations of economic, social or local need to live in a rural area, siting and design criteria for rural housing, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements in a manner consistent with NPO 19 of the NPF. Further revitalisation of these areas will be achieved by implementing other Development Plan policy objectives which will enhance development opportunities by stimulating the regeneration e.g., through the promotion and support of economic development

initiatives like agri-tourism, cottage type industries and local enterprise, as referred in Chapter 4. Our primary objective and aim will be to ensure real and long-term community consolidation and growth of our smaller towns, rural settlements and settlement nodes. Therefore, we will have regard to the viability of our smaller towns and rural settlement nodes in the implementation of rural housing policy.

Rural Housing Policy Objectives

General H 24 - We will 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.

Rural Area under Strong Urban Influence

The key Development Plan objectives in this area are, on the one hand, to facilitate the housing requirements of the local rural community, subject to satisfying site suitability and technical considerations, whilst on the other hand directing urban generated development to areas zoned and designated for housing in the adjoining villages and settlement nodes. The Council will manage sustainable growth in designated 'Rural Areas Under Strong Urban Influence' and facilitate the provision of single houses in the countryside based on the core consideration of demonstrable economic, social or local need to live in a rural area, siting and design criteria for rural housing and compliance with statutory guidelines³ and plans, having regard to the viability of smaller towns and rural settlements.

New Homes in the Open Countryside

- Policy Objective H 28 - We will facilitate the provision of single housing in the countryside, in rural areas under urban influence, based on the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria as set out in this plan and in relevant statutory planning guidelines, having regard to the viability of smaller towns and rural settlements.

Housing Need

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

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

Volume 2: Development Plan Management Standards

- The use of zoned and serviced land to its maximum, as positioned in the core and settlement strategies, and other relevant and associated chapters and policies of this Development Plan, will assist in achieving the objective of satisfying housing demand in a sustainable manner. In the application of densities, it is also important to recognise and reflect the function and character of the urban area (i.e. city, towns, villages and settlement nodes), as set out in the settlement hierarchy in Volume 1: Section 2.9 -Table 2.2.

Volume 3: Appendix 8 - Landscape and Seascape Character Assessment

The appeal site is located in a 'low sensitive' landscape categorisation.

Table A8.2. - Sensitivity Classifications - 3. Low Sensitivity - A common character type with a potential to absorb a wide range of new developments.

4.3(a) Low Sensitivity Areas - A large area of County Waterford is designated as a landscape of low sensitivity. These areas have potential to absorb a wide range of new developments subject to normal planning and development control procedures. In these areas the Planning Authority will have regard to general restrictions to

development such as scenic routes, siting, road setbacks, road widening plans, parking numbers, road and sewage disposal criteria.

The L5055 (secondary Road) is a designated 'Scenic Route' in the Development Plan.

5.2. Natural Heritage Designations

The following natural Heritage designation is located in the vicinity of the appeal site:

- Blackwater River (Cork/Waterford) SAC (002170) is located approximately 500m to the west of the appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. The main planning grounds of the First Party Appeal are as follows:

- The appellants farm in the vicinity of the appeal site and have animals to tend to twice daily on a one acre site and grow vegetables and hay on a further nine acres, 10 acres in total. The landholding is rented and is located approximately 1km to the NE of the appeal site (to the east of the L5055).
- Documentation has been submitted demonstrating that the appellants have lived in the vicinity of the appeal site for in excess of 7 years and within a 10km radius of the site for the last 17 years.
- The rental property approximately 700m south of the appeal site has been rented by the appellant since 2011 with the exception of an 11 month period in 2012-2013 when it had to be vacated for renovation works.

- This rental property has been taken into receivership and the appellants family, two adults and four children, had to vacate the property on 25th September 2023 and are currently living on a temporary basis with friends and neighbours which is not a long term solution.
- The family are fully integrated into the local community as attested by the documentation submitted with this appeal.
- There are no properties within a 10km radius of the rental property or farmed landholding suitable for the appellant's family requirements and within their budget for rent or sale.
- The single storey design of the proposed dwelling renders it barely visible from the public road and the originally proposed vehicular access onto the private lane would have acted as a screen helping the building to be unobtrusive in the landscape as well as the ecological benefit of retaining the hedge fronting the public road (the Planning Authority preferred direct access onto the L5055 and a drawing showing this access option was submitted as part of the Further Information response).
- Given the social and economic integration of the appellant's into the local community the proposed dwelling would comply with National Policy Objective 19 of the National Planning Framework which permits the provision of single houses in rural areas under strong urban influence where, as in the appellant's case, demonstrable, economic or social need exists to live in a rural area.

6.2. Planning Authority Response

- The Planning Authority has not responded to this appeal.

6.3. Observations

- No observations have been received in relation to this appeal.

6.4. Further Responses

- Not applicable.

7.0 Assessment

- 7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues for assessment, therefore, are whether or not the appellant has demonstrated a genuine local housing need to build a dwelling in a rural area under strong urban influence and the issue of AA Screening.

7.2. Local Housing Need

- 7.2.1. The Planning Authority position is that the appellants have failed to meet the local housing need criteria contained in Policy Objective H28 of the Development Plan. The appellants feel that they have demonstrated a social and economic need to live in the area where the appeal site is located. I draw the Board's attention to relevant documentation submitted with the First Party appeal and also the documentation submitted with the original planning application and the response to the Further Information request issued by the Planning Authority.

7.2.2. Policy Objective H28 states:

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

- 7.2.3. In terms of the economic, social or local need criteria contained in Policy Objective H28, and having regard to the documentation on file, I am of the opinion that the appellant's have demonstrated that their family is fully integrated into the fabric of this rural community for in excess of seven years as required by the Development Plan. Participation and employment in local clubs and enterprises as per the submitted documentation is, in my opinion, sufficient to satisfy the social and local criteria contained in Policy Objective H28.

- 7.2.4. The appellant's have also provided documentary evidence regarding their economic need to be located in the vicinity in terms of the location of the rented landholding approximately 1km from the appeal site with livestock being reared on one acre of this landholding. This source of livelihood within close proximity of the appeal site as per the submitted documentation is, in my opinion, sufficient to satisfy the economic criterion contained in Policy Objective H28.
- 7.2.5. I also note that other properties within a 10km radius of the appeal site for rent or purchase are beyond the means of the appellants who intend to construct the proposed dwelling with the assistance of friends and relatives with construction skills. This is another economic aspect which the Board should have regard to when determining this appeal.
- 7.2.6. I would also comment that Policy Objective H28 appears to be designed to prevent persons currently residing within urban areas from migrating into rural areas with which they have no social, economic or local connections but purely from an understandable desire to live in a bucolic and peaceful environment. The appellants do not fall into this category of applicant and I do not believe that restrictions contained in Policy Objective H28 are intended to be applicable given the specific set of circumstances which the appellant has documented in the appeal submission.
- 7.2.7. I would suggest to the Board that the Planning Authority has erred on the side of caution in the determination of the planning application which is the subject of this First Party appeal and have interpreted Policy Objective H28 in an inflexible and unreasonable manner in this instance.
- 7.2.8. The siting and design of the proposed dwelling are, in my opinion, in compliance with the general siting and design criteria contained in Policy Objective H28. The proposed dwelling is single storey and does not represent a strident feature in the landscape which is classed as being of 'Low Sensitivity' in the Development Plan.
- 7.2.9. I would suggest that the original access onto the private lane to the south of the appeal site would be preferable to direct access onto the L5055 as required by the Planning Authority. Reversion to the original access proposal would mean that an additional vehicular access onto the L5055 in close proximity to the existing junction of the private lane with the L5055 would not be required and thus not introduce a potential traffic hazard at this location on the L5055.

- 7.2.10. In addition, the retention of the hedge will screen the proposed dwelling to a significant degree when viewed from the designated 'Scenic Route' and the biodiversity of the area which the hedge contributes to will be protected.
- 7.2.11. Accordingly, in my opinion, the appellants have indeed demonstrated compliance with the local housing need criteria of Policy Objective H28 and in addition the siting and design of the proposed dwelling are acceptable and in compliance with the requirements of Policy Objective H28 of the Development Plan. Therefore, there is no obstacle to the Board granting permission in this instance if it is minded to do so subject to appropriate conditions.

7.3. AA Screening

- 7.3.1. Having regard to the relatively minor development proposed and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would 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 that planning permission be granted for the proposed dwelling for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the location of the proposed development, to the local housing need demonstrated by the applicant and to the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the policy requirements of the development plan, would not seriously injure the visual amenities of the area and would not be prejudicial to public health nor pose a threat to the natural habitat of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 7th day of June 2023 as amended by the further plans and particulars submitted on 11th day of August 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The vehicular entrance shall be from the private lane to the south of the site as shown in the plans and particulars submitted on the 7th day of June 2023. Details of this entrance shall be agreed with the planning authority in writing prior to the commencement of development.</p> <p>Reason: In the interests of traffic safety and protecting biodiversity (hedge retention).</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise, dust and vibration management measures, rock breaking/excavation methodologies and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the</p>

	<p>planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> (a) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment (b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established (c) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation. <p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape in the interest of visual amenity.</p>

8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
----	---

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.

Bernard Dee
Planning Inspector

21st March 2024