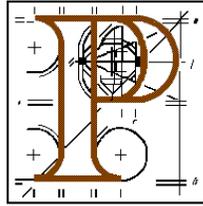


An Bord Pleanála



Inspector's Report

Development: House with attic accommodation, septic tank and all ancillary site works at Coolroe Lower, Glenbeigh, Co. Kerry.

Planning Application

Planning Authority : Kerry County Council
Planning Authority Register Ref. : 14/499
Applicant : Bernard Murphy
Type of Application : Permission
Planning Authority Decision : Grant permission

Planning Appeal

Appellant(s) : National Roads Authority
Type of Appeal : 3rd Party v Grant
Observer(s) : None

Date of site inspection : 8th April 2015

Inspector: **Michael Dillon**

1.0 Site Location and Description

- 1.1 The site, with a stated area of 0.329ha, is located approximately 1.5km due southwest of the village of Glenbeigh, Co. Kerry. Access to the site is from a private driveway off the N70 which serves a bungalow. There is an older two-storey stone house to the northwest of the appeal site with independent access from the N70. Signage indicated that this house was 'For Sale' on the date of site inspection. There is a farmyard opposite the aforementioned two-storey house – being the farmyard of the applicant's family. The 100kph speed restriction applies in this area. There is a single, broken white line in the centre of the road at this location and limited hard shoulders. There are no public footpaths and there is no public lighting. Sight distance at the existing driveway access to the bungalow (which is to be utilised to server the application site) is good in either direction.
- 1.2 The site itself is roughly rectangular, on or about the 40m contour, and slopes steeply uphill from northwest to southeast – there being a difference of approximately 13m in height. It forms part of a small grassed field which was dry under foot on the date of site inspection. To the east and southeast, the site abuts agricultural land – the boundaries with which are sod & stone banks with some holly trees. The southwest boundary of the site is undefined. The northern boundary of the site abuts an area where large boulders have been cleared from the field – and below them, to the north again, the curtilage of the aforementioned older stone two-storey, stone house. Access will be via right-of-way across the concrete driveway to the bungalow to the west (the applicant's parents' house). There are good views to the north and northwest, from the site across the narrow valley. The site is visible from the N70 – particularly when travelling in a northeasterly direction towards Glenbeigh.

2.0 The Proposed Development

- 2.1 Permission sought on 30th July 2014, to construct a 140sq.m dormer house (partially stone-clad) with access from the driveway of an existing bungalow to the west. It will be necessary to excavate into the hillside to form a flat platform on which to construct the house. A well is to be bored to the southeast of the site. Surface water is to be discharged to a soakway. Foul waste is to be discharged to a septic tank and to a proprietary effluent treatment system and on to a soil polishing filter. A detached garage is proposed to the rear of the house.
- 2.1.1 The application was accompanied by a Site Characterisation Assessment Report for effluent disposal.

- 2.2 Unsolicited additional information was received on 18th September 2014, from the agent for the applicant, in answer to an observation made by the NRA objecting to the development.
- 2.3 Following a request for additional information, revised drawings were received by the planning authority on 25th November 2014, as follows-
- Relocation of house to a lower level on the site, so as to be less visually obtrusive – 38.5m finished floor level.
 - Sight visibility at the existing bungalow entrance from the N70.
- 2.3.1 The submission is accompanied by a short report from L.C. Lonergan, Consultant Engineers, in relation to the access to the site.

3.0 Development Plan & Other Guidance

- 3.1 The relevant document was the Kerry County Development Plan 2009-2015, when permission was granted. However, since that time, the Kerry County Development Plan 2015-2021 has come into effect – from 16th March 2015.
- The site is located within an area zoned ‘Rural – General’, the lowest classification of landscape protection within the county. Within such areas, Table 3.7 requires, in relation to residential development that- *“The proposed dwelling shall be used as a place of permanent residence”*.
 - Objective RS-6 states- *“Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition such development shall be subject to the inclusion of an occupancy clause for a period of 7 years”*.
 - Map 3.1 indicates that the site is located within an area designated a ‘Stronger Rural Area’ – drawn from the “Sustainable Rural Housing Guidelines for Planning Authorities” – April 2005. Within such areas Objective RS-10 indicates that it is an objective of the Council to “Facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations”.
 - Section 7.2.1.2 in relation to Access onto National Routes states- *The creation of an access or the intensification of usage of an existing access onto a National Road shall only be considered where it is in compliance with ‘Spatial Planning and National Roads Planning Guidelines (DoECLG January 2012’*. *In compliance with Section 2.6 of these Guidelines the following “exceptional circumstances” as agreed with the NRA shall pertain in County Kerry whereby new accesses or the intensification of existing accesses will be considered along the following g sections of the National Secondary Network (see Table 7.3) in compliance with the*

criteria listed [The N70 Killorglin-Cahersiveen-Kenmare road is included in the Table]. *The Criteria include-* a) *there is no suitable alternative non-national public road access available;* b) *the development otherwise accords with the Development Plan;* and c) *safety issues and considerations can be adequately addressed in accordance with the NRA's design manual for Roads and Bridges.*

- Objective SS 3-33 in relation to rural development seeks to “Facilitate where possible, in accordance with proper planning and sustainable development, family members on their own land”.
- Objective ZL 1 seeks to “Protect the landscape of the county as a major economic asset and an invaluable amenity which contributes to the quality of people’s lives”.
- Map 12.1m indicates that there are no Views & Prospects within the vicinity of this site.

3.2 The document - ‘*Spatial Planning and National Roads, Guidelines for Planning Authorities*’, 2012 sets out the planning policy considerations relating to development affecting National Primary and National Secondary Roads, including Motorways and associated junctions, outside the 50-60kph speed limit zones for cities, towns and villages. The guidelines replace the document, ‘*Policy and Planning Framework for Roads*’, published by the Department of Environment in 1985; supplement other policy guidance on roads-related matters in other Ministerial Guidelines in relation to retail planning and sustainable rural housing; and replace the National Roads Authority policy statement on national roads published in May, 2006.

4.0 Planning History

No reference is made to any recent planning applications on this site.

5.0 The Planning Authority’s Decision

By Order dated 17th December 2014, Kerry County Council issued a Notification of decision to grant planning permission subject to 16 no. conditions – the principal ones of which may be summarised as follows-

1. The development shall be carried out in accordance with plans and particulars received by the planning authority on 30th July and 25th November 2014.
2. Requires payment of development contribution of €343 for community infrastructure, environmental amenities and facilities.
3. Requires payment of a development contribution of €1,400 for roads infrastructure.

4. House shall be used as a place of permanent residence and shall not be used as a holiday home.
5. 7-year occupancy clause.
13. Access shall be via existing access from N70 as shown on layout of 25th November 2014.

6.0 Grounds of Appeal

The appeal from the National Roads Authority (NRA) received by the Board on 22nd January 2015, can be summarised in bullet point format as follows-

- The development takes access from a private lane off the N70 National Secondary Route.
- The grant of permission is at variance with national policy in relation to preserving the level of service and carrying capacity on national roads, outlined in the document 'Spatial Planning and National Roads – Guidelines for Planning Authorities 2012'.
- The site is outside the 50/60kph speed restriction area.
- Additional traffic movements to and from this house would be at variance with national policy. Accesses and turning movements are the main causes of traffic accidents.
- Development is at variance with Objective INF 8-8 and sections 8.2.6 and 8.2.9 of the Development Plan.
- It is acknowledged that the Development Plan does allow housing for family members – however, such an exception was not agreed with the NRA.
- The Draft Kerry County Development Plan 2015-2021, includes provision for 'exceptional circumstances', agreed between the Council and the NRA. Such 'exceptional circumstances' must satisfy three criteria – (i) no suitable alternative non-national road access, (ii) the development otherwise accords with the Development Plan, (iii) safety issues are adequately addressed. These three criteria reflect the provisions of section 2.6 of the Spatial Planning and National Road Guidelines document.
- The family landholding indicates alternative non-national road access in this instance.
- The development by itself, and the precedent which a grant of permission would create, would endanger public safety by reason of traffic hazard at a point where the 100kph speed restriction applies.
- National roads account for less than 6% of roads nationally – whilst they carry approximately 45% of all road traffic.

- The Road Safety Authority 'Road Safety Strategy 2013-2020' seeks to reduce the number of accesses onto national roads by 5% by 2020.
- Government investment in national roads needs to be protected.

7.0 Observations

None received.

8.0 Response Submissions

8.1 1st Party Response to 3rd Party Appeal

The response of Architectural Design, agent on behalf of the applicant, Bernard Murphy, received by the Board on 24th February 2015, can be summarised in bullet point format as follows-

- No additional access is being created to service this house.
- There will be no increase in traffic. Increased traffic is not inevitable. A major reduction in usage at the applicant's parents' house has taken place recently with three siblings leaving home.
- The existing access complies with all safety and sight-line guidelines.
- The Development Plan 2009-2015, does allow for permission in 'exceptional circumstances'. The new draft Development Plan also allows for permission in 'exceptional circumstances'.
- Major works to improve this stretch of the N70 have been carried out in recent years. The proposed house will not have any impact on that investment in upgrading the road.
- There is a substantial distance between the existing farmyard area and any available alternative site. The distance is such that it would inevitably increase traffic due to the need to use a car to reach the farmyard. The proposed site ensures that the majority of movement between farmyard and house will be pedestrian. The applicant needs to be close to the farmyard during lambing and calving periods.
- The proposal involves no new access – so the permission will not impact on the 5% reduction target set down in the Road Safety Strategy 2013-2020.
- The applicant will inherit the family farm.

8.2 2nd Party Response to Grounds of Appeal

There is no response from Kerry County Council to the grounds of appeal submitted.

9.0 Assessment

The principal issues of this appeal relate to Development Plan provision for housing in rural areas, traffic safety, visual amenity and effluent disposal.

9.1 Development Plan

The old County Development Plan was in force when notification of decision to grant planning permission was issued by Kerry County Council. The new County Development Plan came into effect on 16th March 2015. The policies within the new Development Plan are not significantly different from those contained within the old one. The site is located within an area zoned Rural General, where houses should be occupied as a place of permanent residence (not holiday homes). The site is identified as being located within a 'Stronger Rural Area' as per the classifications contained within the 'Sustainable Rural Housing Guidelines for Planning Authorities 2005'. Within such areas occupancy clauses of 7 years are recommended. The applicant currently resides with his parents in the house to the southeast of the appeal site. He is stated to be involved in agriculture and is stated to inherit the family farm. The applicant would appear to come within the classification of persons for whom a house in a rural area could be considered. However, I would note that there is no indication given of the extent of the family landholding, the location of the original farmhouse which served the farm (the applicant's parents' house being a bungalow of relatively recent construction); the history of any other planning applications which may have been made, or permissions granted for housing development on the family landholding. I note that the two-storey residence located between the appeal site and the farmyard was indicated as being 'For Sale' on the date of site inspection. Section 7.2.1.2 of the Plan deals with access onto National Routes – which section of the Plan I have commented upon under the heading 'Access & Traffic'.

9.2 Access & Traffic

9.2.1 The proposed development site will be accessed via a right-of-way over an existing private driveway which serves as access to a single bungalow (the applicant's parents' house) off the N70 National Secondary Road at a point where a speed limit of 100kph applies. It is necessary to assess whether or not the subject proposal is acceptable in terms of traffic safety and whether it accords with accepted policy as regards development management along the national road network. In this respect the appellant has raised concerns that the submitted proposal would be at variance with official policy to preserve the level of service and carrying capacity of national roads and to protect the public investment in such

roads as outlined in the '*Spatial Planning and National Roads, Guidelines for Planning Authorities*' (DoECLG 2012) on the basis that the proposed development by itself, and in conjunction with traffic generated by the existing house, would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the N70 National Secondary Route at a point where a speed limit of 100kph applies, and as it would also interfere with the free-flow of traffic on the road. However, in response to the grounds of appeal, the applicant has asserted that the subject proposal does not involve the creation of a new access onto the N70 and will instead utilise an existing access arrangement onto the national road, which has the benefit of adequate sightlines in both directions. Furthermore, it has been indicated that the additional traffic movements generated at this location, consequent on the proposed development, would be of no significance, as the applicant already resides with his parents.

9.2.2 The '*Spatial Planning and National Roads, Guidelines for Planning Authorities*' document states that Development Plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses onto national roads where a speed limit greater than 50kph applies. Section 2.5 of the Guidelines subsequently outlines a series of policy approaches with regard to access to national roads which all development plans and any relevant local area plans must implement. These include lands adjoining national roads to which speed limits greater than 60kph apply, lands adjoining national roads within 50kph speed limits, and transitional areas where the plan area incorporates sections of national roads on the approaches to or exit from urban centres that are subject to a speed limit of 60kph before a lower 50kph limit is encountered. The subject site is accessed from a driveway which extends from a section of national road where a speed limit of 100kph applies and, therefore, it is appropriate to revert to the provision in the Guidelines that seeks to avoid the intensification of existing accesses onto national roads where a speed limit greater than 50kph applies. Most notably, the Guidelines expressly state that this provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

9.2.3 It is evident that the NRA policy has been causing some difficulty within the county. The appellant acknowledges that the CDP provides for development of houses for family members in rural areas – but that this was not agreed with the NRA and does not accord with NRA policy. The Kerry County Development Plan 2015-2021 has attempted to deal with the issue of access to National Routes – whereby the Council and the NRA have identified stretches of road where access could be allowed in

“exceptional circumstances”. The Council considers the current case to constitute “exceptional circumstances”, whilst the NRA does not – as the applicant has not indicated the extent of the family landholding or availability of other lands with road frontage to a non-National Route.

9.2.4 The appellant is concerned to preserve the carrying capacity of the national road network. Whilst the subject proposal does not involve the creation of a new access onto the national road, but rather avails of an existing access arrangement, there will nonetheless be additional turning movements into and out of the site, notwithstanding that the applicant currently resides with his parents. The NRA is concerned to make existing junctions with public roads/community facilities/places of significant employment, safe for turning. It is not reasonable that, in addition, junctions with private laneways/driveways should also have to be upgraded – particularly where piecemeal development leads to intensification of traffic turning movements at such junctions. Whilst the applicant may reside with his parents, a new house would generate additional traffic turning movements over and above those which exist at present – particularly for a family dwelling. Additional traffic turning movements at this junction would reduce the carrying capacity of the N70.

9.2.5 In terms of traffic safety, the existing junction arrangement opens onto a section of national road where the overall horizontal and vertical alignment of the carriageway is good, as evidenced by the broken white centreline and where sightlines in excess of 220m are available in both directions. Similarly, the forward visibility for traffic approaching the site entrance would seem to be within acceptable parameters. However, turning movements into the site, particularly for right-turning vehicles, would be more likely to result in traffic hazard at a location where there are no hard shoulders, deceleration lanes or turning lanes.

9.3 Visual Impact

The position of the house on site was altered during the course of consideration of the application, to meet concerns of the Council in relation to visibility above the level of the N70. The site layout plan drawing, submitted by way of additional information on 25th November 2014, is contradictory: the drawing indicates a finished floor level of 48.5m, whilst the section drawing indicates 38.5m. The submission of the same date indicates the same figure of 38.5m. I would take the reference to 48.5m to be a mistake. It would be possible to require the 38.5m finished floor level by way of condition attached to any grant of planning permission – for the sake of clarity. The original finished floor level proposed when permission was sought on 30th July 2014, was 40.7m. It is proposed to erect a landscaped earthen mound at the entrance to the site to help screen the house from view for northeastbound traffic on the N70 – i.e. heading

towards Glenbeigh. The mature garden to the older two-storey stone house to the northeast will help to screen the house from view from the N70. The bungalow belonging to the applicant's parents is located at a slightly higher level than the proposed house, and is clearly visible from the N70. I note that there are no views & prospects listed in this area. However, the N70 forms part of the Ring of Kerry route – an important tourist circuit within the county. The ground rises behind the proposed site – and so the house will not breach the sky-line when viewed from the N70. On balance, I would be satisfied that the proposed house would not appear unduly obtrusive on the landscape.

9.4 Water

9.4.1 Water Supply

The application form indicates that the proposed supply for the house is a new well to be drilled up-slope of the house and the proposed effluent treatment plant. No indication is given of the source of water supply for the applicant's parents' house to the west of the site or to the older two-storey house immediately to the northwest of the proposed house. The source of water supply to the farmyard (on the opposite side of the N70) is not indicated either. I take this to be the farmyard attached to the family farm (and referred to in appeal documentation) but nowhere indicated as such on drawings submitted. The Environment Section of Kerry County Council was satisfied with the arrangements for water supply.

9.4.2 Surface Water

It is proposed to discharge surface water to a soakway located in the northeastern corner of the site. There are no drains or streams located within or abutting the site. There is a stream located 45m to the northeast of the site.

9.4.3 Foul Effluent

It is proposed to discharge foul effluent to a septic tank, and from thence to a proprietary effluent treatment system and onwards to a sand polishing filter in the northwest corner of the site. Discharge from the polishing filter is to ground. The nearest watercourse is a stream some 70m to the northeast. The site is uphill of an older two-storey house to the northwest. The location of the septic tank/effluent treatment system serving this house has not been indicated on drawings submitted. Neither has the septic tank/effluent treatment system for the applicant's parents' house been indicated on drawings. More importantly, the source of water supply for the aforementioned two houses has not been indicated. In the case of the house to the northwest, this is a significant gap in information, particularly as it lies downhill of the proposed effluent treatment system for the proposed new house. Such information should be available in order to ensure that the development would not be prejudicial to public health. In

the absence of such information, I would consider that the proposed development would be prejudicial to public health.

9.5 Other Issues

9.5.1 Development Contribution

Kerry County Council attached two development contribution conditions to the Notification of decision to grant planning permission. In the event that the Board is considering granting planning permission, it would be appropriate to attach a condition requiring payment of a development contribution for community facilities and roads.

9.5.2 Appropriate Assessment

Kerry County Council carried out screening for appropriate assessment, and concluded that the proposed development would not have a detrimental impact on any European site. The closest European sites are The Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (Site code 000365), the Castlemaine Harbour SAC (Site code 000343), and the Castlemaine Harbour SPA (Site code 004029). The first-mentioned SAC is located uphill of the site. The other two are located downhill of the site – being approximately 3.0km distant via the nearest point of the watercourse which could potentially link them. As mentioned elsewhere in this report, that watercourse is located 45m to the northeast of the appeal site. There is no direct surface water linkage between the appeal site and any of the aforementioned European sites. Having regard to the nature and scale of the proposed development and proximity to the nearest European sites, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, either individually or in combination, with other plans or projects on a European site.

9.5.3 Archaeology

There are no archaeological sites indicated in proximity to the appeal site.

9.5.4 Occupancy Clause

Condition 5 of the Notification of decision to grant planning permission which issued from Kerry County Council provided for a 7-year occupancy clause. If the Board is minded to grant planning permission, it would be appropriate to attach a similarly-worded condition.

10.0 Recommendation

I recommend that permission be refused for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

1. The appeal site is located in a Strong Rural Area where it is policy of the planning authority to provide for the development of sustainable rural housing in the countryside in accordance with the provisions of the Sustainable Rural Housing, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to facilitate where possible, in accordance with the proper planning and sustainable development of the area, family members on their own land. These policies are considered reasonable. Based on the information submitted, the Board is not satisfied that the applicant has shown a need to reside at this particular location, in such a manner as to achieve a reasonable balance with regard to the objective of the development plan and to override the concerns in regard to generation of increased traffic turning movements onto the N70. In this regard it is noted that the applicant has not indicated the extent of the family landholding in this area, the history of residential occupancy on the family landholding and any planning permission(s) which may already have been granted for family members, or availability of alternative sites/houses within the immediate area. The proposed development would, therefore, conflict with the objectives of the Development Plan and be contrary to proper planning and sustainable development of the area.
2. The proposed development would result in the generation of additional turning movements on a National Secondary Route which would obstruct road users and which would reduce the carrying capacity of the said Route and would conflict with National Roads Authority official policy to preserve the level of service and carrying capacity of national roads and to protect public investment in such roads.

**Michael Dillon,
Inspectorate.**

21st April 2015.