



An  
Bord  
Pleanála

## Inspector's Report ABP.307535-20

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Development	Erect a dwelling house served by an effluent treatment tank and Sandcell polishing filter.
Location	Farranaspig, Aghadoe, Killarney Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/28
Applicant(s)	Donal O'Donoghue & Grainne Cronin
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third party
Appellant(s)	Mel Ferguson
Observer(s)	None.
Date of Site Inspection	2 <sup>nd</sup> October 2020
Inspector	Mary Kennelly

## 1.0 Site Location and Description

- 1.1. The site is located in the townland of Farranaspig, approx. 3km to the northwest of Killarney town centre. It is situated approx. 700m to the west of Aghadoe Crossroads, on the western side of the N22, Tralee-Killarney road. This is a rural area which is characterised by farmland with a considerable level of one-off houses. The site is accessed by means of a local road serving the area of Aghadoe which branches off the N22 at a sharp bend and leads northwards to Aghadoe Crossroads. The site is accessed from a private laneway which branches off in a southerly direction from the main road through Aghadoe. This road is a local rural road which is characterised by ribbon development extending westwards from the crossroads. The laneway serves a number of houses, with three one-off houses to the east of the lane, before forming a further crossroads with a newly developed access laneway. There are at least six one-off houses to the south of the laneway and a further house (labelled as applicant's sister's house) to the north, and the laneway leads westwards and southwards to the applicant's uncle's farm.
- 1.2. The site area is given as 0.23ha. The site is rectangular in shape and has frontage to the private lane on the eastern boundary and to the extended private laneway to the south. It is low-lying and currently marked out by means of temporary fencing. There were two horses grazing on the field at the time of my inspection. It is proposed to provide a new access drive from the private lane to the south to serve the site. The site is relatively level, but the ground levels generally fall away to the west and the overall ground level is slightly below the level of the adjoining access laneways. The eastern, northern and western boundaries are undefined and not screened but the southern boundary is reasonably well screened at the eastern end by mature tree lines and hedgerows.

## 2.0 Proposed Development

- 2.1. It is proposed to erect a two-storey dwelling at the north-eastern end of the site with a stated floor area of 286.6sq.m and the maximum height as 8m. The dwelling would be accessed by means of a new entrance from the private lane to the south at the eastern end of the site. The proposed driveway would lead to a large parking

courtyard which would be separated from the lawn area by a low masonry wall, with an entrance leading to the rear of the house.

- 2.2. The proposed dwelling is designed as a modern two-storey structure with a series of flat roofs which are trimmed with a metal finish. The accommodation incorporates a large sitting room, a living room and a dining room/kitchen and a bedroom on the ground floor with three bedrooms served by individual ensuite bathrooms on the first floor. The applicant has indicated that he is the son of the landholder and works on repairing boats on his uncle's farm nearby. It is proposed to provide a septic tank with a percolation area in the south-western corner.
- 2.3. The Board should note that the drawing submitted with the planning application (Drg. No. 19/008/J01/P03) indicated that it is proposed to retain the existing beech hedge screening along the northern, eastern and western boundaries and that it is proposed to plant the southern boundary with native trees and hedging. I can confirm however, that although new hedge plants have been planted along the northern, eastern and western boundaries, they appear to be merely weeks old and do not provide any level of screening at present. I can also confirm that the existing hedging along the southern boundary extends for approx. a third of the frontage only.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to grant planning permission subject to 15 no. conditions. These were generally of a standard type. Condition 2 required payment of a development contribution of €8,152.00 under the General Development Contribution Scheme (which includes a Killarney Hub Levy of €3,432). Condition 4 required the design of the dwelling to be of a traditional design and construction in accordance with the drawings submitted to the P.A. and required the external finishes to be neutral in colour and tone and the FFLs to be as shown on the plans submitted on 17/01/20. Condition 5 required the development to be connected to the public water system.

Conditions 6 and 7 relate to occupancy conditions requiring the dwelling house to be the first place of residence for a period of 7 years and not to be used as a holiday

home. Conditions 13 and 14 required the installation of a packaged waste water treatment system (Tricel P6 or equivalent), a packaged sand polishing filter (Sandcel or equivalent) and a gravel distribution layer, and a certificate of installation and compliance with the EPA Code of Practice. Condition 15 required the undertaking of a maintenance contract for the WWTP and the polishing filter.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report initial report (10/03/20) stated that the location of the site is in a **Rural Area Under Strong Urban Influence** and that it was designated as **Rural General**. It was further noted that it is zoned G3 – Conservation, amenity or buffer space, corridor/belt – landscape protection in the Killarney Municipal LAP. The Area Planner noted however, that the third party objector (the appellant) had stated that the site is located in a "Secondary Special Amenity Area", but the Area Planner disputed this and considered the site to be located in Rural General. This consideration was fundamental to the assessment of the proposed development by the Area Planner. I will return to this in my assessment below but wish to point out at this stage that my interpretation of the current County Development Plan Map 12.1k is that the site is indeed designated as Secondary Special Amenity Area.

The Area Planner noted that Rural General Areas constitute the least sensitive landscapes and from a visual amenity point of view have the ability to absorb a moderate amount of development without significantly altering the character of the area. It was considered that the site was not readily visible from the public road and that the development would read as part of a cluster. On this basis it was considered that it would not contravene Objective G3 of the LAP "as it would not impinge on any buffer area." Notwithstanding this, the Area Planner considered that the rear façade would be visible as the site is approached from the access road and that there is no boundary screening in place. It was therefore decided to seek further information to address these matters.

It was further noted that the area is one which is under Strong Urban Influence, but noted that as applicant was applying to build on the family land with his family home

close by, and that it would be his permanent place of residence, this would be acceptable.

An EIA – Preliminary Examination was carried out. It was considered that as the site is a small-scale residential project comprising a dwelling house with a floor area of 286m<sup>2</sup>, on a 0.23ha site in a suburban area, and is significantly below the mandatory thresholds for residential projects, there would be no likelihood of significant effects on the environment.

Appropriate Assessment Screening was carried out and it was noted that the site lies within 900 metres of two Natura 2000 sites, namely Killarney National Park SAC and SPA. It was concluded, however, that there is no likely potential for significant effects to Natura 2000 sites.

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

**Environment** – The SAU carried out a visual assessment of the site and noted that the lands are fenced off for a dwelling with firm ground conditions, a shallow slope and a roadside drain. The T value was noted as 44.14, which indicates that the site is suitable for a conventional septic tank system. It was considered that the site would be suitable for a wastewater treatment system using a sand polishing filter. The proposal is considered suitably sized for a PE of 6. It was considered that the site is suitable for a percolation area and polishing filter. No objection subject to conditions, which required a packaged WWTS and polishing filter.

### 3.3. **Prescribed Bodies**

**Irish Water (8/2/20)** – no objection subject to conditions. It was advised that the applicant must sign a connection agreement prior to the commencement of development, but that such connections will be subject to IW Capital Investment Programme. It was also pointed out that the public water main is located approx. 170 metres from the proposed development along a narrow road and that the applicant will be responsible for laying the new water main as far as the mains at their own expense. It was further advised that they will be responsible for acquiring any wayleaves/rights of way necessary to allow the said pipe to be laid along the route.

### 3.4. Third Party Observations

Mel Ferguson – regular visitor to this part of Killarney and is appalled at the extent of development and urban sprawl that has been permitted here despite the lack of essential services. It was considered that the proposed development would result in a proliferation of individual WWTPs and fails to understand how the site passed a percolation test, as the lands in the area appear to be waterlogged. The area is designated as being under urban development pressure, is in an area of Secondary Amenity and is zoned as Landscape Protection, where no building is permitted.

### 3.5. Further information

3.5.1. A FI request was issued on the 10<sup>th</sup> March 2020 for a comprehensive landscaping scheme, together with a schedule for implementation, with particular attention given to screening along the northern boundary, which should be semi-mature at the time of planting. In addition, it was requested that further consideration of the design of the rear façade should be given.

3.5.2. Further information was submitted on **15<sup>th</sup> April 2020**. This included a revised landscaping plan which proposes the retention of the recently planted beech hedging and the additional planting of silver birch trees at 3m intervals along the northern, eastern and western boundaries. The treatment of the southern boundary was also amended to comprise a sod and stone ditch planted with Crataegus, Spinosa and Fuchsia double row of saplings. It is further intended to plant cherry trees on either side of the site entrance and some clusters of trees (birch, ash) together with a wild-flower meadow in the western section of the site.

The further information was deemed to be significant and was re-advertised on 23<sup>rd</sup> April 2020. No further submissions were received.

The Area Planner considered that the FI was satisfactory and that the proposed dwelling would not be visible from the public road and would not be visually obtrusive. Permission was recommended subject to conditions.

## 4.0 Planning History

**PA Ref 15/763** – planning permission **granted** for a house on a site to the south with a wastewater treatment system and a polishing filter to Kieran Healy (son of Con Healy).

**PA Ref 09/607** – planning permission **granted** to Pat Healy (brother of Con Healy) for construction of (A) a new access road, (B) two dwelling houses with proprietary wastewater treatment systems and (C) outline permission to construct 2 no. dwelling houses and septic tanks. This site was considerably larger (1.21ha) than the current site but included the appeal site at its south-eastern corner. The site was bounded by almost the entire eastern access road and most of the southern access road, and by the river to the north. It comprised four plots fronting onto the southern access lane with an indicative proposal for a further 10 dwelling units to the immediate west. It included a further access road through the northern end of the site with a green area on the northern side of the proposed road. The site, at this point in time, was zoned “Low Density Permanent Residential” in the Kerry Hub Tralee & Killarney Environs Local Area Plan (2007). Documentation on file indicates that it was an objective to accommodate urban generated housing within the development limits of towns and villages and on zoned lands with the Environs.

**PA Ref. 07/470** – permission **granted** to construct an access/service road in 2007, applicant Con Healy. (Note previous permission refused for same development description under PA Ref. 06/1403). The road extends westwards from its junction with the lane to the east of the appeal site. Road shown as c. 122m in length and proposal was to widen and upgrade dirt track. Covering letter stated that Con Healy (owner, with an address at Woodlawn Road, Killarney) had no other intention at that time apart from applying for one dwelling house on his landholding (which included the site of the current proposed development). Permission granted subject to conditions including requirement to improve sight lines at junction.

**PA Ref. 07/3133** – planning permission **refused** on site to south for a single dwelling house with treatment unit and percolation area. Applicant – Con Healy, Woodlawn Road, Killarney. Reason for refusal was based on inadequate information to demonstrate effluent disposal on site and prejudicial to public health.

**PA Ref. 07/312** – permission granted to Brian Moriarty (landowner was formerly Con Healy) for a house immediately to the south of the newly permitted access road.

**PA Ref. 07/064** – permission granted to Brian and Eileen O’Leary for house at eastern end of access lane (landowner formerly Con Healy).

**226706 (PA Ref 07/3149)** – planning permission **refused** by Board for a single house on the site immediately to the north on grounds of piecemeal and uncoordinated development which would inhibit the overall development of these lands in accordance with the zoning provisions for the area. Applicant Kevin Griffin.

## 5.0 **Policy Context**

### 5.1. **National Planning Framework**

**National Policy Objective 15** seeks to manage the growth of areas under strong urban influence to avoid over-development and

**National Policy Objective 19** seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location.

### 5.2. **Sustainable Rural Housing Guidelines for Planning Authorities**

Differentiates between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs.

### 5.3. **Kerry County Development Plan 2015-2021**

In terms of Rural Settlement Policy, (3.3), the site is located in a **Rural Area Under Strong Urban Influence** which is described as one which exhibits characteristics such as proximity to the immediate environs or close community catchment of the Hub Towns and larger towns, rapidly rising population, evidence of considerable pressure for the development of housing due to the proximity to such an urban area

or to major transport corridors with ready access to the urban areas and pressures on infrastructure such as the local road network.

**Objectives RS1-RS6**, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

There are two further objectives which relate specifically to **Rural Areas Under Strong Urban Influence**, namely, **RS-7** which seeks to facilitate the provision of dwellings for immediate family members subject to compliance with normal planning criteria and environmental standards, and **RS-9** which seeks to facilitate the housing requirements of the rural community while directing urban generated housing into towns and villages.

Section 3.3.2 relates to development in Amenity Areas. The site is located within an area zoned as **Rural Secondary Special Amenity**, as shown on **Map 12.1k**. This is one of three rural landscape types. It constitutes sensitive landscapes which can accommodate limited amounts of development. It is stated that the level of development will depend on the degree to which it can be integrated into the landscape. In terms of settlement policy, Residential Development will be regulated in accordance with the provisions of Section 3.3.1 and Table 3.7. Certain provisions apply to SSAAs. These include a requirement for dwellings to be designed sympathetically to the landscape, to be sited such that they do not negatively impact the landscape, that they are not unduly obtrusive in terms of siting and design, with an emphasis on the retention of trees and hedgerows. In terms of settlement policy, sons/daughters or favoured nieces/nephews of the traditional landowner (in ownership for 10 years) will be required, or demonstration of genuine rural employment need or family living in locality prior to January 2003 with the applicant having been reared in the locality.

Chapter 12 sets out the objectives for **landscape protection**. Policy **ZL-1** seeks to protect the landscape of the county as a major economic asset and an invaluable amenity which contributes to people's lives. Section 12.2.1 states that "permission will not be granted in areas zoned Rural Secondary Special Amenity for development which cannot be integrated into its surroundings".

#### 5.4. **Killarney Municipal District Local Area Plan 2018-2024**

The site is located within the environs of Killarney. It is stated at 3.1.2 that Killarney Environs are under intense pressure from urban generated housing and that sufficient lands have been zoned in the County Development Plan and the LAP for residential use within the town boundary to cater for the existing and future residential needs of the population of Killarney. The site is zoned **Landscape Protection G3** on Map A, which forms part of the (G1-G5) zoning - **Green/Recreational/Conservation/Open space/Sports/Amenity**. The G3 zone is described as being for the conservation, amenity or buffer space corridor/belt. The zoning matrix at page 39 indicates that residential use is *Not Normally Permitted* in this zone.

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

There are three European Sites in the vicinity of the site. These are

- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) approx. 900m to south
- Killarney National Park SPA (004038) approx. 900m to the south
- Castlemaine Harbour SAC (Site code 000343), approx. 7km to west.

### 6.0 **The Appeal**

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

The appeal is a third-party appeal against the decision to grant planning permission. It was submitted by Mel Ferguson, with an address in Clontarf, Dublin. The main points raised may be summarised as follows:

1. **Site location unsuitable for development** -The site is located in a rural area, is in agricultural use and is set back c. 190m from the public road. There is a significant number of one-off rural dwellings immediately to the north and east of the site. Access to the site is from the local road network, which has a speed limit of 80kph, and the local road is only 5.8m in width with no footpaths.
2. **Contrary to settlement policy** – Site is located within an Area Under Strong Urban Influence as set out in the Government’s Sustainable Rural Housing Guidelines for Planning Authorities (2005). Such areas are also subject to national guidance in the NPF – National Policy Objective 19 – whereby in areas under urban influence, it is a core consideration to demonstrate economic and social need to live in a rural area. No such need has been demonstrated by the applicants, one of whom states that his employment is as a boat tour operator, and no occupation is stated by the other. The Land Registry documents submitted in support of the application indicates that the site is a stand-alone folio which does not form part of a landholding. It is noted that the letter from the applicant’s mother indicates that an almost identical letter was issued by the same landowner in the past, but in those cases (12/95 and 08/2811), the landowner’s address was given as Loreto Road Killarney.
3. **Landscape Protection Zone G3** – the zoning designation is for “the conservation, amenity or buffer space, corridor/belt and for Landscape Protection.” Development is prohibited in the zone. Taken in conjunction with existing and permitted development in the area, this would constitute an excessive density of suburban type development in a rural area, which militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities and would be contrary to the proper planning and sustainable development of the area.
4. **Effluent treatment** – the development will result in the proliferation of standalone sewage treatment plants in the area, many of which are not working. It is submitted that, taken in conjunction with the existing development in the vicinity, the proposed development would result in an excessive concentration of development served by individual wastewater treatment units in the area and would be prejudicial to public health.

5. **Roads and traffic** – the private road serving the development is substandard and is non-compliant with several conditions of the permission granted to construct/upgrade this road (07/740). The issues of non-compliance include no stop sign, thermoplastic road markings, non-provision of 40mm wearing course, failure to remove loose cable wires and to cut hedges. The proposed additional access would exacerbate the traffic hazard associated with the road. Furthermore, the additional traffic that would be generated would put further pressure on the substandard junction of the N22 with the local public road serving the site.
6. **House design** – the proposed design of the dwelling is not in keeping with the existing development in the area. The design which encompasses an overzealous use of modern finishes such as zinc cladding and vertical urban style landscaping proposals, shows no regard for the design of existing dwellings in the area.
7. **Previous refusal** – The Board has previously refused permission (Ref. 226706 - PA Ref. 07/3149) for a house on a site immediately to the north on the grounds of piecemeal and uncoordinated development.
8. **Transparency** – letter from planning authority advising that decision had been made on 25<sup>th</sup> May 2020 was not issued until 16<sup>th</sup> June 2020 and was received by the appellant on the 19<sup>th</sup> June 2020. It is at best misleading and calls into question the entire planning application.

## 6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on the **30<sup>th</sup> July 2020**. It is stated that most of the issues have been addressed in the planning reports, but specific points were made as follows:

**Effluent treatment** - it is reiterated that the site is considered to be suitable for wastewater treatment as proposed.

**Rural Settlement policies** - The settlement policies regarding Areas Under Strong Urban Influence are re-iterated, with particular emphasis on RS-7, which favours individual houses for immediate family members. In this regard, it is pointed out that the applicant is the son of the landowner and that the dwelling is to be the permanent

place of residence of the applicant. As such it is considered that the applicants meet the criteria for the rural settlement policy.

**Landscape Protection policy** – The site is zoned G3 in the Killarney Municipal LAP. However, it is stated that “there is an anomaly between the County Development Plan 2015-2021, where the site is zoned as ‘Rural General’”. It is reiterated that such areas constitute the least sensitive landscapes which can absorb moderate amounts of development. It is further noted that the development would not be readily visible from the public road and will read as part of a cluster of dwellings. It was therefore considered that the proposal would not contravene Objective G3 as it will not impinge on any buffer area.

**Transparency** – it is acknowledged that the letter to the appellant was incorrectly dated 25<sup>th</sup> May 2020. However, it is confirmed that it was issued on the 17<sup>th</sup> June 2020 and a copy of the An Post registered post book is attached to demonstrate. It is further stated that the letter did state the correct date of decision as 16<sup>th</sup> June 2020.

### 6.3. **Response from first party**

The first party responded to the grounds of appeal by email on 11<sup>th</sup> August 2020. The response was mainly in the form of a rebuttal of the grounds of appeal. The response is mainly in the form of a rebuttal of the grounds of appeal. The following points are of note:

**Site Location** – the site is located on a low-lying field of the family agricultural landholding and will not be visible from the public road due to extensive screening. And existing houses on the main road. The design is in accordance with the Rural Design Guidelines, unlike some of the existing houses nearby. It is also of a similar contemporary style to Aghadoe Heights Hotel.

**Effluent Treatment** – there is no evidence that existing wastewater treatment systems in the vicinity are not working. A previous permission was granted (09/607) for 4 no. dwelling houses on individual systems, which deemed the site to be suitable for wastewater treatment.

**Rural settlement policy** – the family of one of the applicants, Donal O’Donoghue, have owned the farm for five generations and he has been involved in the farming of the land and in the storing and maintenance of boats in connection with their boat

tours business. He has also been residing at his sister's house closeby, together with his fiancée, Grainne Cronin. She works at a hairdresser's salon in Killarney town. Donal has three uncles and two aunts, two first cousins and another sister, each of whom has built a house on the landholding. This demonstrates his social and economic need to live in the area, due to his extensive family connections and his need to continue to store and maintain boats in his uncle's shed. It is disputed that the proposal would constitute excessive density based on its location within the family landholding and is located on the northside of the buffer zone, so would not interfere with Zone G3.

**Land registry map** – the applicant is obtaining the site from his mother, Breda O'Donoghue (nee Healy), who in turn obtained the site from the family land holding. Individual sites were allocated to members of the extended Healy family from the original family farm which was handed down from generation to generation. The family are an intrinsic part of the local community.

**Roads and traffic** – the access road was damaged by construction traffic but will be repaired following construction of the proposed dwelling house, and the remaining signage and road markings will be put in place. The proposed dwelling will not increase pressure on the N22/Aghadoe road junction as the applicants already live in the area and use the road network.

**Previous planning history** – permission was refused for a single house (07/3149) but this was due to the fact that the site was zoned residential at the time and it would have undermined the overall development of the area. Subsequently, planning permission was granted for four houses (09/607), which comprised full permission for two dwellings and outline permission for the remaining two houses, as well as an access road and it was demonstrated that a further 8 houses could be constructed to the west, subject to the extension of the Killarney foul sewer network to this land. This permission has not been implemented. It is stated that the proposal to extend the foul sewer was withdrawn due to budget cutbacks.

#### 6.4. **Observations on the Grounds of Appeal**

None received.

## 7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows: -

- Rural Settlement Policy
- Landscape and visual amenity
- Adequacy of effluent treatment
- Traffic hazard and adequacy of access

### 7.2. Compliance with Settlement policy

7.2.1. The site is located in a Rural Area Under Strong Urban Influence, due to its proximity to Killarney town and to its location close to both the N22 Tralee-Killarney road and to the N72 (Killarney-Killorglin). Such areas have been identified in the CDP due to the intense pressure that they have sustained for urban generated development in a rural area. The CDP policy (RS-7 and RS-9) is to facilitate housing need requirements of rural communities, particularly for immediate family members on family farms/landholdings, while directing urban generated housing into towns and villages. The policy in Secondary Special Amenity Areas (Table 3.7) is a little more restrictive in that the landholding must be in the ownership of the family for more than 10 years and be the principal family residence, or the applicant must show a genuine housing need or his/her family have lived in the area since before 2003, with the applicant having been reared in the locality.

7.2.2. The Sustainable Rural Housing Guidelines (2007) state that development driven by urban areas should take place within these built-up areas, and that a distinction should be drawn between development that is needed to sustain rural communities and that which tends to take place in the environs of towns, which should be more appropriately take place within such urban areas. The Guidelines also state that urban generated housing can give rise to haphazard and piecemeal development with problems such as disorderly and inefficient patterns of development, obstruction of alignment of future infrastructure projects, undermining of investment in infrastructure and higher public expenditure.

7.2.3. The policies set out in the Sustainable Rural Housing Guidelines have been reinforced in the more recently published National Framework Plan (2018). Relevant

policies include National Policy Objective 15, which seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities. National Policy Objective 19 seeks to ensure that 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 elsewhere. In rural areas under strong urban influence, it is the policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic and social need to live in a rural area, having regard to the viability of small towns and rural settings. Thus, it continues to be necessary to demonstrate a functional economic or social requirement for housing need in these areas that are under intense pressure.

7.2.4. Killarney MD LAP (2018) also points to the need to focus new residential development in towns in order to build the critical mass necessary to support the existing level of services and to generate demand for new services commensurate with the functions of each settlement (2.2.2.1). It is further stated, at 2.6.3, that the current pattern and level of development in Areas Under Strong Urban Influence is unsustainable and that the cumulative impact of such development has the potential to reduce the value of the countryside as a regional asset by damaging the landscape, water quality, biodiversity interests. It is also likely to create additional and unnecessary problems for the supply of infrastructure and services and to increase car dependency and high energy use.

7.2.5. It is clear therefore, that the overall settlement strategy, which is consistently expressed in the hierarchy of national and local policies and plans, is to seek to prevent urban sprawl and to ensure that development takes place in appropriate locations in a sustainable manner which protects the vibrancy of rural communities, but in such a way that it does not give rise to long term problems for both the urban centres and for the rural environment. It is equally clear that the area in which the site is located is one which has been subjected to very intense pressure in the recent past, and that there have been numerous planning permissions granted to various members of the applicant's extended family on the original landholding. The applicant has provided information regarding at least 10 members of the family, (including two sisters and various uncles, aunts and cousins), who have secured

planning permission for individual dwellings on the original landholding. The planning history of the area further suggests that several other planning permissions for individual houses have been granted within the overall landholding over the past decade or so.

7.2.6. The applicant states that he is living with his sister in her house, which is within the cluster of development. However, there is no information regarding how long he has lived there and no suggestion or evidence that he was brought up in the rural area and the main connection with the land appears to be that his mother received a site from his uncle. I note from the planning history of sites within the landholding that addresses within Killarney town were frequently given as the address of the landowner and/or the applicant. The applicant works in a tourism business connected with boat tours of Killarney lakes, and he states that he uses a shed on his uncle's farm to store and maintain his boats. However, there is no indication that the business is based in Farranaspig or Aghadoe or that it is geographically required to be located here. The other applicant, Mr. O'Donoghue's fiancée Grainne Cronin, is stated to work as a hairdresser in Peter Marks in Killarney. On the basis of the information provided, it is considered that the applicant has not demonstrated a rural generated housing need to live in this particular area. It is further considered that the housing need is an urban generated one and that the area has come under sustained pressure in recent times for such housing, such that the vibrancy of the rural community is not likely to be under any threat of decline. As the area is also designated as Secondary Special Amenity, there is an additional policy response to be complied with (Table 3.7), and the applicants have not demonstrated that they can meet the requirements of this settlement policy.

7.2.7. Thus, it is considered that the applicants have no genuine rural housing need within this area and that their housing needs could be met within the town. It is considered that the established rural settlement policies for the area, which seek to avoid the overdevelopment of rural areas under strong urban influence, and to direct such development to towns and villages, would be contravened. The proposed development would, therefore, be in conflict with the provisions of the National Framework Plan (2018), the Sustainable Rural Housing Guidelines for Planning Authorities (2007), the Kerry County Development Plan (2015) and the Killarney Municipal District Local Area Plan (2018).

### 7.3. Landscape and visual amenity

7.3.1. The Map for Amenity Areas in the County Development Plan (**Map 12.1k**) indicates clearly that this area is designated as **Secondary Special Amenity Area**, which has limited capacity to absorb new development, and for which policy Objective ZL-1 seeks to control development in order to protect the landscape. However, the Area Planner has stated, in her planning report and in her report in response to the grounds of appeal, that the site is in fact located with an area designated as **Rural General**, which relates to the least sensitive landscapes. I have been unable to find any documentary evidence to substantiate this. Furthermore, the more recently adopted Killarney Municipal LAP 2018 shows the land to be zoned as G3, Landscape Protection. Although the Area Planner has advised in the response to the appeal that “there is an anomaly between the [zonings]”, it is not unduly surprising that the site (and lands in the immediate vicinity) is zoned for Landscape Protection, as the area is located on elevated ground overlooking the Lakes of Killarney. This is clearly evident a few hundred metres along the road at Aghadoe village.

7.3.2. Regardless of whether the Amenity Area designation is Secondary Special Amenity or Rural General, or whether it is readily visible from the public road, the site is still located in a very sensitive landscape, and is zoned Landscape Protection in the LAP. This zoning forms part of a wider set of green space zones (G1-G5) which are essentially designated for open space, recreation and amenity, and G3 is intended as a Landscape Protection Zone for “Conservation, amenity or buffer space, corridor/belt”. Residential units are ‘Not Normally Permitted’ in the G3 zoning. I note that CDP Policy Objective ZL-1 seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people’s lives. Aghadoe is on an escarpment overlooking the lakes of Killarney, which is a very highly valued landscape and tourism asset. It is considered, therefore, that any development of these lands would undermine the stated purpose of the zoning and would materially contravene the zoning provisions for the area. The lands in the immediate vicinity of the site have seen a proliferation of new individual housing developments in recent years which, if allowed to continue, would militate against the preservation of the rural environment.

7.3.3. The proposed dwelling house is very large with a floor area of c.286m<sup>2</sup>. The design is contemporary in approach and uses a series of flat roofs with zinc cladding,

modern materials such as dark brick and metal finishes, and non-traditional window openings and glazing details. This is considered to be a design approach that would be more suited to an urban or suburban environment than a rural one in a sensitive landscape. The proposed landscape screening (15/04/20) is also particularly urban in its form, with an over-reliance on beech hedging and suburban type trees to screen the development from the surrounding countryside, which would further accentuate the inappropriate design approach at this location. I would accept that the proposed dwelling house, by reason of the topography and existing roadside screening, would not be particularly visible from the public road. However, it would extend an existing suburban pattern of development and taken together with the existing and permitted development in the vicinity, would result in an excessive density of development which would militate against the preservation of the rural character of the area. It is considered, therefore, that the scale and design of the proposed dwelling would not easily be absorbed by the landscape, and would not be in accordance with policy Objective ZL-1, which seeks to protect this landscape.

7.3.4. It is acknowledged that permission was formerly granted under PA Ref. 09/607 for four houses (including 2 outline permissions) on a larger site incorporating the appeal site. However, at that time the lands were zoned for 'Low Density Permanent Residential' development under the 'Kerry Hub, Tralee and Killarney Environs Local Area Plan', 2007. In the intervening period, the lands have been rezoned under the Killarney Municipal District LAP 2018 as G3 - Landscape Protection – Buffer Zone, and several new houses have been permitted and constructed on the original landholding to the immediate south and east/southeast of the site. The site also forms part of a much larger agricultural field, which is likely to be developed further should the Board be minded to grant permission for the current proposal. It is considered that a further grant of permission on this field could, therefore, create a precedent for further housing along the northern and western side of the private lane, which would exacerbate the situation further and create a suburban form of development in a rural area.

#### **7.4. Adequacy of effluent treatment**

7.4.1. The site forms part of a large agricultural field which was being grazed by horses at the time of inspection. It is a low-lying field with evidence of rushes and generally poor drainage. The T-Value is stated as being 44. The site assessment reports

indicate that the site is not well suited to effluent treatment by conventional septic tank and percolation area. I noted from my inspection and from the information on the file that the site is located in an area where there is extensive ribbon development and a considerable number of individual dwellings served by private effluent treatment systems, many of which have polishing filters.

7.4.2. The proposed development seeks to provide a packaged wastewater treatment plant and percolation area with a sand polishing filter in the south-west corner of the site. The SAU – Environment Section has stated that a visual assessment has been carried out and that, having regard to the information submitted with the application, the proposed wastewater treatment system is considered to be appropriately designed for the proposed development on this site. The proposal also meets the separation distance requirements. I would agree that the system proposed seems to be appropriately designed. However, based on the information provided regarding the characteristics of the site and to my observations on site, and in particular the very high number of dwelling houses served by wastewater treatment systems in the vicinity of the site, I would have some concerns regarding the density of development served by private effluent treatment systems. The site lies beyond the zoned lands of the town boundary and is not served by a public sewerage system. It is considered, therefore, that it would be unsustainable to seek to accommodate a further private WWTP at this location.

7.4.3. It is considered that having regard to the information submitted with the application, and to the high concentration of individual dwelling houses served by private effluent treatment systems, the board would not be satisfied that the proposed wastewater treatment system would be adequate and would not be prejudicial to public health.

## **7.5. Traffic hazard and adequacy of access**

7.5.1. The concerns raised by the appellant relate to the substandard nature of both the junction of the N22 with the public road serving the site and of the private access road leading to the development. I would agree that the junction of the Aghadoe Road with the N22 – main Tralee-Killarney road – is seriously sub-standard in terms of alignment and the visibility available at the junction. The N22 is a heavily trafficked road and is particularly busy at peak hours as it forms part of a commuter belt. Any additional traffic movements at this junction would put further pressure on it and

would contribute to a traffic hazard. I note the comment of the applicant's agent that the applicants already live at his sister's house in the area, but consider that the proposed development would add traffic associated with a further household to the road network, which is substandard and as such, would give rise to additional turning movements and increased traffic flow on the network.

7.5.2. The issues raised regarding the private access road are likely to be resolved following the construction of the dwelling, should the Board be minded to grant planning permission. However, it is a matter of concern that the conditions that were attached to the permission for the access road have not been complied with following the construction of houses, which are dependent on the upgraded access road. In particular, the visibility and lack of road markings/signage at the T-junction would give rise to a traffic hazard. It is considered that should the Board be minded to grant permission, a condition requiring adherence to these standards should be attached to any such permission.

7.5.3. It is further considered that the junction of the private access road with the public road serving the site is also sub-standard, particularly in terms of visibility to the south, where there is roadside vegetation within the sight triangle. This is also a busy road with a significant amount of one-off housing, including a B&B directly opposite the junction, and tourist attractions located c.1km to the west at and near Aghadoe Heights. Given that the private access road serves at least a dozen houses at present, it is considered that the additional turning movements at this location would endanger public safety by reason of traffic hazard.

## 7.6. Other matters

7.6.1. **Previous refusal by Board** – Reference has been made in the submissions to ABP Ref. 226706 (PA 07/3149), whereby the Board had refused permission on a site immediately to the north (within the larger agricultural field). It is noted, however, that the refusal relates to a site which was zoned as Low Density Permanent Residential at the time and the Board was concerned that it represented piecemeal development as an overall development layout had not been determined for the lands. Thus, it is not directly comparable but highlights the fact that the area has been under intense pressure for residential development for some time.

7.6.2. **Transparency** – this issue relates to the date of the planning decision by the P.A. and when and how it was communicated to the other parties. It is considered, however, that the P.A. has clarified the situation in its response to the grounds of appeal. It would appear that the wrong date was recorded on the letter of decision sent to the third-party appellant, but it was otherwise issued correctly. It is noted that the appellant was in a position to make an appeal to the board which has been validated and is now before the Board.

## 7.7. **Appropriate Assessment**

7.7.1. The P.A. reports screened out appropriate assessment. It is noted that the closest European sites are Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) and Killarney National Park SPA (004038), which are located approx. 900m to the south. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

## 7.8. **Environmental Impact Assessment**

7.8.1. Having regard to the nature, size and location of the proposed development, 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.

## 8.0 **Recommendation**

8.1. It is recommended that planning permission be **refused** for the reasons and considerations set out below.

## 9.0 **Reasons and Considerations**

1. The site is located within a Secondary Special Amenity Area, which is outside the development boundary for Killarney town in a Rural Area Under Strong Urban Influence, as identified in the Sustainable Rural Housing Guidelines for Planning Authorities, which has experienced intense pressure for urban

generated housing development, and where it is the policy of the planning authority, as set out in the Settlement Strategy contained in the County Development Plan and in the Killarney Municipal District Local Area Plan, to facilitate the rural housing needs of immediate family members on family farms/landholdings, while directing urban generated housing into towns and villages, and where it is Government policy, under National Policy Objectives 15 and 19 respectively, of the National Planning Framework Plan, to manage the growth of such areas in order to avoid over-development and to require the social and economic need of the applicant to reside in these areas to be clearly demonstrated. Having regard to these national and local policies, it is considered that the applicants do not come within the housing need criteria as set out in the Guidelines and in 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 efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the policies contained in the National Framework Plan (2018), the Sustainable Rural Housing Guidelines (2007), the Kerry County Development Plan (2015) and the Killarney Municipal District Local Area Plan (2018) and would be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located within a rural area designated as a Secondary Special Amenity Area in the current Kerry County Development Plan 2015-2021, wherein it is required that development is designed to be sympathetic and sensitive to the landscape, and is zoned Landscape Protection Area G3 in the current Killarney Municipal District Local Area Plan 2018-2024, and where the Zoning Objective ZL-1 is to protect the landscape of the County as a major economic asset and as an invaluable amenity which contributes to the quality of people's lives. This objective is considered reasonable. The proposed development, which is not related to the amenity potential of the area or the use of the area for agriculture, would contravene materially that development objective for the use primarily for the purpose of protecting the landscape as an asset and as an amenity, and where residential units are Not

Normally Permitted. The proposed development would, therefore, fail to comply with the provisions of the County Development Plan and the Killarney Municipal District Local Area Plan and would be contrary to the proper planning and sustainable development of the area.

3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by individual private effluent treatment systems in the area. The proposed development would, therefore, be prejudicial to public health.
4. The site is accessed by means of an unsurfaced minor laneway with no road markings and poor visibility, by a local road which is substandard in width and alignment and is lined by ribbon development, and by a poorly aligned and uncontrolled major junction with a National road, the N22, where sightlines are poor in a southerly direction. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements it would generate on this poorly aligned and substandard road network.

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Mary Kennelly

Senior Planning Inspector

14<sup>th</sup> October 2020