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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 19/625**

**Appeal** by Noel Russell of Kilcooly, Ballydavid, Dingle, County Kerry against the decision made on the 10<sup>th</sup> day of October, 2019 by Kerry County Council to grant subject to conditions a permission to Brian O'Shea and Grainne Twomey care of Moriarty Design and Construction of An Nead, Ardrinane, Annascaul, County Kerry in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** (a) Retention of the existing house on the site within revised boundaries. (b) Construction of a dwellinghouse on the newly created plot including a connection to the public sewer and all necessary site works at Murreagh, Ballydavid, County Kerry. Further public notices were received by the planning authority on the 13<sup>th</sup> day of September, 2019.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the Dingle Functional Area Local Plan 2012-2018, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention and the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The development proposed for retention and the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out, completed and retained in accordance with the plans and particulars lodged with the application, 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, completed and retained in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.  
  
(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The proposed development shall be amended as follows:

(a) The dwelling shall be orientated as originally proposed.

(b) The dwelling shall be re-sited in a position three metres further away from both the south-eastern and the south-western boundaries of the site. Any consequential alterations to the driveway and parking area shall be made explicit.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of visual and residential amenity.

4. The proposed dwelling shall be only used as a place of permanent residence and not as a holiday home or second home.

**Reason:** In order to comply with Objective OO-46 of the Local Area Plan.

5. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

6. Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

7. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.

8. (a) Prior to the commencement of occupation of the proposed dwelling, the proposed earth mound, which would be sited between this dwelling and the existing dwelling to the north-west, shall be laid out and formed and, thereafter, retained in-situ for the duration of the said dwellings on their respective sites.

- (b) The existing earth mounds along the site boundaries shall be retained for the duration of the existing and proposed dwellings on their respective sites.

**Reason:** In order to safeguard the residential amenities of the area.

9. (a) The site shall be landscaped with suitable indigenous trees, shrubs and hedges to the satisfaction of the planning authority in accordance with the Site Layout Map submitted on the 21<sup>st</sup> day of August, 2019.
- (b) Existing boundary screening shall be retained in full.
- (c) The earth mound and screening between this site and the adjoining site to the north-west shall be completed prior to the occupation of the dwellinghouse on site at which time the developer shall submit a certificate of compliance prepared by a suitably qualified person with professional indemnity insurance stating that all landscaping conditions pertaining to the grant of permission have been complied with. Photographic evidence shall also be submitted.
- (d) Any trees or shrubs, which die or become diseased, shall be replaced with similar native species such as native evergreens (holly, yew and scots pine) or native deciduous (oak, elm, ash, birch, hazel, alder, willow, whitethorn, blackthorn, Irish whitebeam and rowan).

Species such as cypress, escallonia, griselinia, leylandii, rhododendron and laurel shall not be used.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

10. 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 the 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.

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**Terry Ó Niadh**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board**

**Dated this            day of            2020**