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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 19/717.**

**Appeal** by John Michael Fitzgerald and Christine Buckley care of MOC Architects of 4 Lakeview Villas, Aghadoe, Killarney, County Kerry against the decision made on the 12<sup>th</sup> day of November, 2019 by Kerry County Council to refuse permission for the proposed development.

**Proposed Development:** Construction of a two-storey dwellinghouse, shed, proprietary wastewater system and percolation area and all associated site works at Lackabeg, Abbeydorney, County Kerry.

**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 site location in proximity to the family home and farm buildings availing of existing boundary screening, and to the design of the proposed dwelling, it is considered that, subject to compliance with the conditions set out below, the proposed development would not form an obtrusive feature in the landscape at this location, would not seriously injure the visual amenities of the area and would be adequately absorbed and integrated into the landscape. The proposed development would, therefore, be in accordance with objectives RS-2 and RS-4 of the current Kerry County Development Plan and would be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 1<sup>st</sup> day of October, 2019, 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.

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

2. (a) The proposed access road shall be omitted and the entrance to the proposed development shall come off the existing driveway, with a spur to be added south of the southernmost existing shed to the new dwelling.
- (b) The proposed shed to the south of the proposed dwelling shall be moved so that it does not interfere with the branch spread of existing screening trees in the vicinity.

Details of the re-design of the access road and the relocation of the shed shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.

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

3. (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 unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. 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.

4. (a) The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.
- (b) The external walls shall be finished in neutral colours such as grey or off-white.

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

5. (a) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
- (b) Surface water from the site shall not be permitted to drain onto the adjoining public road.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

6. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 1<sup>st</sup> day of October, 2019, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakaways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter. Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.

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

7. 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:
- (a) Drawings to scale of not less than 1:500 showing – (i) a survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation, and (ii) planting of indigenous deciduous trees to augment the existing planting along all site boundaries.
  - (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 which shall provide for the planting to be completed before the dwelling is first made available for occupation.

Species to be used shall not include either cupressocyparis x leylandii or grisellinia. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

8. 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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**Dave Walsh**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2020.**