



An
Bord
Pleanála

Board Order
ABP-315563-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/1130

Appeal by Máire O'Grady Mann of Listry Cross, Listry, Faha, Killarney, County Kerry against the decision made on the 21st day of December, 2022 by Kerry County Council to grant, subject to conditions, a permission consequent on the grant of outline permission to Declan Byrne care of Griffin Project Management of 51 New Street, Killarney, County Kerry in accordance with plans and particulars lodged with the said Council:

Proposed Development: Permission consequent on the grant of outline permission (planning register reference number 19/553) for construction of three number dwellinghouses complete with treatment units and polishing filters, all in accordance with plans and particulars submitted at Listry, 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.

Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2022-2028 and the Killarney Municipal District Local Area Plan 2018-2024, and to the existing outline planning permission granted for the three houses on the site under Planning Register Reference Number 19/553 (Kerry County Council) together with a grant of permission also under Planning Register Reference Number 19/553 (Kerry County Council) received in respect of the access road that would serve the three houses, and to the submissions on file in relation to the planning application and appeal, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be visually obtrusive or out of character with the surrounding area and would not seriously damage the amenities of the adjoining residential properties. The proposed development would be in accordance with the provisions of the current Development Plan for the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's reasons for recommending refusal of permission consequent on the grant of outline permission, in respect of:

The inspector's recommended reason number one, the Board noted that the access road referred to in this condition has been permitted under Planning Register Reference Number 19/553 (Kerry County Council) and can be implemented and this element is not part of the appeal that is currently before the Board for consideration. Accordingly, the Inspector's recommended reason number one was not merited.

In relation to the Inspector's recommended reason number two (based on rural housing policy objective KCDP 5-15), while the Board noted the policy change that arose since the grant of outline permission, because of the coming into force of the Kerry County Development Plan 2022-2028 and that the site is located in a rural area under urban influence under the current plan, the matter of the principle of three houses has been decided by the planning authority at outline permission stage and the application for permission consequent of the grant of outline permission is within the terms of the outline permission. In accordance with the provision of Section 36(5) of the Planning and Development Act, 2000, as amended, no appeal may be brought to the Board under Section 37 against a decision of a planning authority to grant permission consequent on the grant of outline permission in respect of any aspect of the proposed development which was decided in the grant of outline permission. Accordingly, the Board did not agree with the Inspector's recommended second reason to refuse permission on the basis that the development would materially contravene Policy Objective KCDP 5-15 of the current development plan in this instance noting that the principle of three houses on the site has been established by reason of the grant of outline permission and is not a matter that can therefore be appealed. The Board did not, therefore, attach this second recommended reason.

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 received by the planning authority on the 16th day of December 2022, 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. Save as set out in this schedule of conditions, all other conditions set out in the grant of outline permission under Planning Register Reference Number 19/553 shall apply and be implemented as part of the development.

Reason: In the interest of clarity.

3. The house designs shall be amended to provide a simple traditional vernacular house forms based on the 'Building a House in Rural Kerry – Design Guidelines'. The designs shall provide an uninterrupted vertical emphasis roof pitch between 35 and 45 degrees and the two-storey projections to the front shall be omitted. The proposed window design shall be replaced with a vertical emphasis window design throughout and the width of the centre front facing window at first floor level shall be reduced in width. Eaves shall be non-projecting, black in colour with matching black rainwater goods. Details of the revised designs and materials, colours and textures of all the external finishes to the proposed dwelling houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To reflect the requirements of Condition number 3 of the grant of outline permission and to comply with the 'Building a House in Rural Kerry – Design Guidelines'.

4. The service roadway that was granted full permission under Planning Register Reference Number 19/553 shall be fully complete prior to the occupation of any of the proposed dwelling houses.

Reason: In the interest of orderly development.

5. The wastewater treatment systems, one serving each proposed house, hereby permitted, shall be installed and maintained in accordance with Conditions Numbers 7 to 15 attached to the grant of outline permission under Planning Register Reference Number 19/553.

Reason: In the interest of public health and to prevent water pollution.

6. The site shall be landscaped with suitable indigenous trees, shrubs and hedges in accordance with the landscaping scheme received by the planning authority on the 16th day of December 2022. All planting shall be native Irish species of Irish provenance and in consultation with recommendations from the All-Ireland Pollinator Plan, Pollinator Friendly Planting Code Guidelines. All landscaping and screening shall be carried out within the first growing season following occupation of the dwelling houses.

Reason: To integrate the development into its setting and in the interest of biodiversity and the proper planning and sustainable development of the area.

7. A boundary treatment plan for the proposed dwellings, appropriate to its location, shall be submitted for the written agreement of the planning authority prior to the commencement of the development.

Reason: In the interest of residential and visual amenity.

8. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, no part of the proposed three dwelling houses shall be used for the provision of overnight commercial guest accommodation without prior grant of planning permission.

Reason: In the interest of orderly development and residential amenity.

P.C.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Monday to Friday inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviations from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Reason: In the interests of visual and residential amenity.

11. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

P.C.

12. Arrangements for the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interests of orderly development and public health.

13. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



Patricia Calleary

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

Dated this 15 day of April 2024