



An
Bord
Pleanála

Inspector's Report

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| Development | Construction of a house, septic tank and site works at Tullamore, Ballybunion, Co Kerry |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 16/49 |
| Applicant(s) | Sean Lynch |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Appellant(s) | Sean Lynch |
| Observer(s) | None |
| Date of Site Inspection | 10 th June 2016 |
| Inspector | Mary Crowley |

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site with a stated area of 0.717 ha is located to the north east of Ballybunion at the end of a cul de sac off the R551 on an elevated site that affords uninterrupted views of the Atlantic to the west and the Shannon to the north. The site forms part of an agricultural field and there are no existing natural boundaries to the site. The area is characterised as rural with a significant number of one off housing and ribbon development.
- 1.2 A set of photographs of the site and its environs taken during the course of the site inspection is attached. I also refer the Board to the photographs of the appeal site and environs available to view throughout the appeal file.

2.0 PROPOSED DEVELOPMENT

- 2.1 This is an application for permission to construct a new 3 bedroom, single storey dwelling house (170 sq.m) with integrated garage (50 sq.m), new entrance, septic tank, percolation area and associated site works. Water supply is proposed from a private well. Proposed wastewater management is by means of a new treatment system on site and proposed surface water disposal is by means of a soakpit.
- 2.2 The application was accompanied by a cover letter, Architects Report, Visual Impact Assessment, letter from the owner of the site (applicant's father) consenting to the applicants making a planning application, a site characterisation form, details of proposed wastewater treatment system and associated information

3.0 TECHNICAL REPORTS

- 3.1 The **County Archaeologist** states that there are no recorded monuments in the immediate area of the proposed development and that no mitigation is required. The Site Characterisation Form Report submitted by the **Site Assessment Unit, Environment Section** concluded that the site is suitable for the incorporation of an on-site effluent treatment system subject to conditions as set out in the report.
- 3.2 The **Case Planner** was satisfied that the applicant met the Councils Rural Settlement Policy however rated the visual impact of the scheme as high. Accordingly the Planner recommended that permission be **refused** for one reason. The notification of decision to refuse planning permission issued by Kerry County Council reflects the recommendation of the Planner.

4.0 OBSERVATIONS / OBJECTIONS TO KERRY COUNTY COUNCIL

- 4.1 There are no observations / objections recorded on the planning file.

5.0 PLANNING AUTHORITY DECISION

5.1 Kerry County Council issued notification of decision to **refuse** planning permission for the following reason:

1. *It is considered that the proposed development, by reason of its location on an elevated, prominent and exposed site would be unduly obtrusive on the landscape and would seriously injure the visual amenities and natural beauty of the area. The proposal would see an extension to development into a substantially open and undeveloped rural landscape. The proposal for a dwelling house at this location would therefore interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry County Development Plan 2015 – 2021. The proposed development would be contrary to the proper planning and sustainable development of the area.*

6.0 PLANNING HISTORY

6.1 There is no evidence of any previous planning application on this site or relevant recent appeal in the immediate area.

7.0 THE DEVELOPMENT PLAN

7.1 The operative plan for the area is the **Kerry County Development Plan 2015 – 2021**. The proposed development is located in an area zoned **Rural General** which is covered by Section 3.3.2.1 of the Plan. The site is also located in an area categorised as **Structurally Weaker Rural Area**.

7.2 The **Sustainable Rural Housing - Guidelines for Planning Authorities 2005** states inter alia that where the ‘*applicant comes within the development plan definition of need*’, people who have roots in or links to rural areas, and are part of and contribute to the rural community planning permission will be permitted subject to an occupancy condition, provided they meet the normal requirements in relation to matters such as road safety, proper disposal of waste water and satisfy the “*normal planning considerations relating to siting and design*”.

8.0 GROUNDS OF APPEAL

8.1 The first party appeal has been prepared and submitted by the applicant’s architect, Noreile Breen against the decision to refuse planning permission. The main points of the appeal may be summarised as follows:

8.2 **Existing Patterns of Settlement** – The area has a rich architectural heritage and established character of hillside rural development. There are at least 46 dwellings

on the same contour level or above the proposed site within 1.5 square miles. An additional 35 dwellings existing within the 1.5 square mile boundary across of all contour levels. To describe the surrounding area as “undeveloped rural landscape” is misleading. Settlement site location map and area images attached.

8.3 **Land Zoning** – The area is zoned Rural General which “generally has a high capacity to absorb development provided that the development is integrated into its surroundings in order to minimise the effect on the landscape”. This was confirmed in a preplanning meeting in March 2015.

8.4 **Visual Amenity and Natural Beauty** – Submitted that the supporting “Visual Impact Assessment” clearly demonstrates that this development would not interfere with the character of the landscape in accordance with Objective ZL-1 of the Kerry County Development Plan 2015-2021. The development does not break the skyline from any vantage point. It is either not visible or only slightly or moderately visible from the surrounding vantage points taken from the R551 or other third class roads. The development would not have a negative impact or be obtrusive on the surrounding landscape.

8.5 **Local Need** – The applicant has a genuine local need to live in the area. The applicant grew up and has lived in the family home his entire life. The applicant’s family have lived in the surrounding area for at least 4 generations. The applicant currently manages the family farm and is involved in the family business “Lynches Oil” located on the R551.

8.6 **Design Response** – The design of the house fully integrates the development into the landscape in accordance with the “Building a House in Rural Kerry Design Guidelines” (2009). A detailed contour survey was carried out together with a contour model to test and determine how the proposal might integrate itself into the landscape. The house is simple and robust in its form, a contemporary interpretation of the informal and simple vernacular architecture found in the area. Careful landscaping considerations blend the development into the landscape while allowing it to be a positive addition to the character and attractiveness of the area. A simple construction is proposed with a very high design and construction quality with emphasis, consideration and care into the detail and selection of materials to ensure a strong and sturdy character which will weather well and embed itself into the landscape over time.

8.7 **Note** the appeal was accompanied by the Visual Impact Assessment, Architects Report and elevational drawings and details.

9.0 **RESPONSE OF THE PLANNING AUTHORITY**

9.1 There is no response from the Planning Authority recorded on the appeal file

10.0 OBSERVATION

10.1 There are no observations recorded on the appeal file.

12.0 ASSESSMENT

12.1 Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key issues relating to the assessment of the appeal are:

- (1) Principle / Policy Consideration
- (2) Visual Impact
- (3) Other Issues (Appropriate Assessment and Development Contributions)

13.0 PRINCIPLE / POLICY CONSIDERATION

13.1 This is an application for single one off house and treatment system in a rural area of Co Kerry. Map 3.1 of the Kerry County Development Plan 2015 - 2021 indicates that the site in question is located within an area designated as '*Structurally Weaker Area*'. Further the proposed development is located in an area zoned Rural General. According to the Development Plan these areas generally exhibit characteristics such as persistent and significant population decline over an average of two census periods (2002-06-11). These areas have low population density averages and few planning application numbers. Many of these areas, by virtue of their location and topography are isolated. It is stated that *in these areas, the challenge is to stop sustained population and economic decline with a focus on both key villages and rural areas*. Objective RS-12 states that is an objective of the Council to *accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, waste water treatment and the protection of important landscapes and environmentally sensitive areas*. Table 3.7 of the Development Plan states that in areas zoned Rural General any development permitted shall be for the use as a permanent place of residence.

13.2 The applicant is the son of the landowner and they are applying for a dwelling house for permanent occupancy. The applicant lives with their parents and manages the family farm and works in the family business "Lynches Oil". The proposed dwelling will be the applicant's *primary permanent place of residence* and they are a *farmer engaged whole time in agriculture*. On the basis of the available information, I am satisfied that the applicant has demonstrated and intrinsic links to the area and satisfies the relevant eligibility criteria set out in Development Plan as regards the development of a rural dwelling house in this area.

13.3 I would draw the Boards attention to Section 3.3.2.3 of the Development Plan that states that subject to the provisions of Sections 3.3.4 and 3.3.5 all residential development in rural areas will be for the use as a primary permanent place of

residence and that in addition it shall be subject to the inclusion of an occupancy clause for a period of 7 years. It is recommended that should the Board be minded to grant permission that a condition be attached requiring that when the proposed dwelling is completed it 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.

14.0 VISUAL IMPACT

- 14.1 Kerry County Council refused planning permission for the proposed development as it considered it would be unduly obtrusive on the landscape and would seriously injure the visual amenities and natural beauty of the area by reason of its location on an elevated, prominent and exposed site and would not be in accordance with Objective ZL-1 of the Kerry County Development Plan 2015 – 2021. The proposed development would be contrary to the proper planning and sustainable development of the area. Objective ZL-1 states that it is an objective of the Council 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.*
- 14.2 As set out previously the proposed development is located in an area zoned Rural General which is covered by Section 3.3.2.1 of the Plan. According to the Development Plan these areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character. Residential development in these areas shall be regulated in accordance with the provision of Section 3.3.1 and objectives RS-1 to RS-4 and Table 3.4. Further the appeal site is under no special protection, neither "Prime Special Amenity", "Secondary Special Amenity" or has no "Protected Views and Prospects" as outlined in Zoning and Landscape Map 12.1a of the County Development Plan (2015-2021).
- 14.3 The proposal reflects the vernacular architecture of the area by adopting a narrow and low "longhouse" type development with low eaves and ridge level which sits parallel to the contours. The driveway lies on the same level of the existing approach and therefore is most unlikely to be seen from a distance. Further no green lawns or decorative garden planting are proposed. Overall I am satisfied that the proposed dwelling design is architecturally sympathetic to the site and environs and demonstrates a clear understanding of this sensitive elevated location and that the design response is acceptable at this location. I am satisfied that that proposed development meets the requirements of the Development Plan.

15.0 OTHER ISSUES

- 15.1 **Traffic Impact** - The proposed development site will be accessed via a new entrance arrangement that will cross a private farm laneway onto an adjacent narrow

third class roadway that in turn will connect with the R551. The third class road also serves numerous one off houses and agricultural lands. I am satisfied that the proposed development using this existing to access the R551 at a junction where *with adequate sight lines* are available will not give rise to a traffic hazard. Given the nature of the scheme proposed and the location of the appeal site I am satisfied that the vehicular movements generated by the proposed development would not have a significant material impact on the current carrying capacity of the road network in the vicinity of the site or conflict with traffic movements in the immediate area. Accordingly I am satisfied that the proposed development will not result in the creation of a traffic hazard

- 15.2 **Drainage Services** - The development will be served by a private well and a packaged wastewater treatment system and polishing filter. I have noted the contents of the Site Characterisation Form and details of proposed wastewater treatment system submitted the application. It is also noted that the Site Characterisation Form Report submitted by the Site Assessment Unit, Environment Section of Kerry County Council concluded that the site is suitable for the incorporation of an on-site effluent treatment system subject to conditions as set out in the report. The proposed arrangements are considered acceptable subject to compliance with the requirements of the planning authority and the EPA guidelines. On the basis of the information available on file, it would appear that the subject site is suitable for the installation of the packaged wastewater treatment system and polishing filter as proposed subject to conditions.
- 15.3 **Appropriate Assessment** – Having reviewed the available information, and following consideration of the ‘source-pathway-receptor’ model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any protected site, the limited ecological value of the lands in question, and the separation distances involved between the subject site and surrounding Natura 2000 designations, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site. Therefore, having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.
- 15.4 **Development Contributions** – Kerry County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended). The proposed development does not fall under the exemptions listed in the “Exemptions from the Payment of Development Contributions” Section of the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a

Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

16.0 RECOMMENDATION

16.1 Having considered the contents of the application, the provisions of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

17.0 REASONS AND CONSIDERATIONS

17.1 Having regard to the sites rural location out with any designated special protection area as outlined in Zoning and Landscape Map 12.1a of the County Development Plan (2015-2021), to the nature, scale and design of the proposed development, to the pattern of existing and permitted development in the area, and to the provisions of the Kerry County Development Plan 2015 – 2021 it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

18.0 CONDITIONS

1. (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

2. 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.

Reason: In the interest of visual amenity

3. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity

5. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

6. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution

7. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, 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 dwelling house 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 soakways 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.

(e) 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 EPA document.

Reason: In the interest of public health.

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 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.

Mary Crowley
Senior Planning Inspector
16th August 2016