



An
Bord
Pleanála

Inspector's Report PL08.246790.

Development	Retain foundations and complete six semi-detached dwellings and construct a detached dwelling, at Pairc Chuimin, Kilcummin, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/234.
Applicant(s)	Barth O'Neill.
Type of Application	Permission.
Planning Authority Decision	To grant permission.
Appellant(s)	1. Denis Duggan. 2. Thomas Brosnan
Type of Appeal	Third party versus decision.
Date of Site Inspection	2 September and 18 October 2016.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Clashnagarane which is part of and to the south west of Kilcummin Village, County Kerry. Kilcummin Village is located approximately 6 kilometres north east of Killarney Town. The village comprises a post office, national school, community centre, nursing home, GAA club and interspersed with detached houses on large plots, two large housing estates are located on separate approach roads outside the village.
- 1.2. The defining feature of the village is the nucleated centre arranged around a triangular loop road with a good public realm (footpaths, community garden, lighting) numerous houses on single plots along the approach roads and two large housing estates; Radharc na Sleibhte to the north and Pairc Chuimin to the south west. It is noteworthy that Radharc na Sleibhte is connected to the village by a footpath and Pairc Chuimin is not.
- 1.3. The appeal site is located at the middle section of the housing estate to the south west of a large public open space and comprises the site of six dwellings. The site of the dwellings is located between completed dwellings to the south and north. The construction of the six dwellings has already commenced and comprises the foundations up to ground floor level, however, construction has ceased and the site is hoarded off from public access. The overall estate is well maintained with well supervised public open spaces and play areas.
- 1.4. Upon inspection of the wastewater treatment compound to the south east of the appeal site, I observed that the ground conditions around the tank, were waterlogged and an unpleasant odour was noticeable in the vicinity. Heavy vehicle tracks lead from the entrance of the site compound to the tank associated with the wastewater treatment system.

2.0 Proposed Development

- 2.1. The development comprises the retention of the foundations and completion of six semi-detached dwellings and permission for the construction of a detached dwelling. All dwellings had the benefit of a planning permission now withered.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission. Condition 16 is referenced below:

Prior to the commencement of any works on site, the applicant/developer shall provide confirmation to the planning authority from a suitably qualified person, the holder of professional indemnity insurance, confirming the following:

- a) The existing on-site wastewater treatment system was constructed in compliance with planning permission(s) previously granted. The applicant/developer is requested to reference the relevant planning permission(s).
- b) The existing on-site wastewater treatment system has sufficient capacity to cater for the existing wastewater loading being generated on-site and the additional wastewater loading from the proposed development.
- c) Furnish the planning authority with a condition report on the existing on-site wastewater treatment system. This report should include all aspects of the on-site wastewater treatment system including sewer network, mechanical unit and the infiltration area.
- d) Provide confirmation on what maintenance is carried out on the on-site wastewater treatment system.

Reason: In the interests of orderly development and environmental protection.

3.2. Planning Authority Reports

3.2.1 The basis of the planning authority decision includes:

3.2.2 The initial planning report noted that the applicant had also lodged a planning application (planning register reference 16/191) to change the use of an existing crèche facility to two houses. In order to fully assess the proposal, the council planner recommended further information be requested, wherein the applicant was requested to suggest proposals for the childcare facilities for the seven dwellings the subject of the current application. Appropriate Assessment Screening concluded that the proposed development would not have the potential for significant effects to Natura 2000 sites.

3.2.3 The second report of the Council Planner notes the offer from the applicant to accept a condition to locate a crèche elsewhere in the estate as part of a concurrent planning application (planning register reference 16/247). The Council Planner concluded that as permission had been recently refused by the Council for the conversion of the existing crèche facility to houses, permission for the construction of seven houses could therefore be granted.

3.3. Other Technical Reports

3.3.1 Kerry County Council Housing Estates Units. Refers to a number of standard technical requirements.

3.3.2 Irish Water. No objections subject to standard conditions and notes.

3.4. Third Party Observations

3.4.1 The Planning Authority received two submissions in relation to the planning application. The main issues raised are similar to those set out in the appeal.

4.0 Planning History

4.1. Subject site

Planning authority register reference 04/1528 permission for 85 dwellings, a crèche and waste water treatment system, and subsequent permissions (06/2062, 09/842) for amendments and extension of the appropriate period. March 2005.

Planning authority register reference 06/2062 ABP ref PL08.219918, permission granted for amendments to layout and house types, May 2007.

Planning authority register reference 09/842 permission for additional detached houses at sites adjacent to 77 and 18., August 2009.

4.2. Neighbouring sites:

Planning authority register reference 16/247, current appeal PL08.247054.

Permission refused for the construction of 32 dwellings and a crèche, on the grounds of premature pending the provision of a public sewerage system for the village of Kilcummin.

Planning register reference number 16/191, current appeal PL08.246784, permission refused to convert existing crèche to two semi-detached dwellings.

Planning authority register reference 08/44 ABP ref. PL08.229829, permission granted for 32 houses December 2008.

5.0 Policy Context

5.1. Development Plan

5.1.1 Kerry County Development Plan 2015-2021

The appeal site is located within the Settlement Boundary outlined for Kilcummin Village on Map 12.1k of the County Development Plan Maps.

Kilcummin is identified as a District Town in the Settlement Strategy for County Kerry and has priority status for sewerage infrastructure.

Kilcummin Sewerage Scheme is identified in Table 7.2 Priority Water & Waste Infrastructure Projects.

5.1.2 Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019

The appeal site is located within the Development Boundary outlined for Kilcummin Village on the Zoning Provision Map of the Local Area Plan Maps.

Development Strategy (page 135)

The development strategy for Kilcummin is to facilitate the successful development of the village as a residential and service centre in the following ways:-

- New development shall contribute towards a compact settlement structure through making effective use of backland, brownfield and infill sites and preventing unnecessary ribbon development.
- Ensure that future development should support the existing role and function of the village as a rural service centre and dormitory settlement.

Kilcummin Zoning Provisions - Objectives

EN-1 Promote environmental improvements designed to upgrade the streetscape and add continuity to an otherwise disjointed streetscape.

Appendix 1 contains the relevant land use zoning maps.

6.0 Natural Heritage Designations

It is noted that the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) is located approximately 300 metres to the south east.

7.0 The Appeal

7.1. Grounds of Appeal

Two third party appeals have been lodged against Kerry County Council's notification of decision to grant permission. The grounds of appeal and main issues raised in each submission can be summarised as follows:

Denis Duggan

- Lack of a footpath between Pairc Chuimin and the village, results in an unsafe pedestrian environment.
- The form and design of the development is not indicative of the existing style of rural housing on large plots, which results in an urban form of development in a rural setting.
- The proposed development will result in Kilcummin becoming a dormitory settlement for Killarney.
- Road links between Kilcummin and Killarney Town are of a poor standard and cannot sustain the increase in development planned.
- There is no proper functioning wastewater facility for the estate and additional houses will put extra strain on a defective system could lead to pollution.
- The planning authority did not take account of submissions made on the planning application and failed to request these items as further information.

- Construction traffic will disturb the residential amenity of the estate and be a traffic safety issue.
- Unbalanced application of County Development Plan policy with regards to rural housing in the area.

Thomas Brosnan

- No further development should take place at Pairc Chuimin until a footpath links the housing estate with the village of Kilcummin.

7.2. **Planning Authority Response**

No response was received from the Planning Authority.

7.3. **Applicant's Response**

The response calls for the Board to uphold the decision of Kerry County Council to grant permission. The applicant also requests the Board to dismiss the appeal as the matters contained within the grounds of appeal, relate to previous grants of permission and compliance with conditions.

7.4. **Observations**

None.

8.0 **Assessment**

8.1. The key issues can be dealt with under the following headings:

- Concurrent Appeals
- Principle of the development

- Roads and Footpaths
- Residential/Visual Amenity/Housing Mix
- Waste Water Treatment
- Appropriate Assessment

8.2. **Concurrent Appeals**

The Board are requested to note two concurrent appeals in the vicinity of this site and within the overall housing estate of Pairc Chuimin. The relevant appeals are PL08.247054 for 32 dwellings and a crèche and PL08.246784 for the conversion of a crèche to two dwellings. There are interconnected issues to do with wastewater treatment and childcare provision, however, I have assessed each case on its own merits.

8.3. **Principle of the development**

8.3.1 The appeal site is located within an existing housing estate inside the development boundary of Kilcummin Village. The site is also located within the functional area of the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019 (LAP). The development strategy of the LAP is to ensure that new development should contribute towards a compact settlement structure through effective use of backland, brownfield and infill sites and preventing unnecessary ribbon development. The proposed development to complete six dwellings and construct a single detached dwelling will comply with this objective and is therefore acceptable. The third party's contention that rural housing policy should be applied to the subject lands is unfounded and out of context with regard to this village location.

8.4. Roads and Footpaths

8.4.1 Whilst it is the case that Pairc Chuimin is not served by a pedestrian footpath link to the village, it is noted that the parent permission (planning register reference 04/1528) shows a footpath link (1.5 metres in width) as far as the Roman Catholic church to the north east. Public realm deficiencies such as a lack of footpaths are identified in the LAP for Kilcummin, and the delivery of same are dependent on individual landowners/developers in accordance with the technical standards of the Council. In this instance a special contribution condition of a planning permission had been complied with by the developer and a payment was made, however, the footpath works did not commence. The delivery of a footpath in this instance is a matter for the Council and accordance with the entirety of section 48 of the Planning and Development Act 2000 (as amended), specifically subsection (12) (b) and (c). This is a matter for Kerry County Council to resolve and cannot be revisited in this appeal.

8.5. Residential/Visual Amenity/Housing Mix

8.5.1 The proposal to complete the existing houses on site and the construction of a detached dwelling are based upon previous grants of permission. There have been no material changes in the physical circumstances of the immediate area with regards to new development. The resultant mix of housing types will not be radically altered by this proposal to provide a six semi-detached and one detached dwelling. The prevailing character of the existing estate is predominantly semi-detached dwellings with a small number of detached and terraced dwellings. The proposed development is therefore acceptable from a visual, residential amenity perspective and housing mix.

8.5.2 To address the concerns of third parties to the planning application with regard to the construction phase of the development, specifically with regard to traffic safety and environmental nuisance, a suitable condition should be attached. Given the central location of this potential construction site, it is considered reasonable to attach a condition that regulates construction traffic and general construction activity in accordance with the technical requirements of the Council.

8.6. **Wastewater Treatment**

8.6.1 It is noted that under the parent permission (04/1528) for the amended development of 84 dwellings and a crèche, a wastewater treatment system designed to cater for a population equivalent of 400 (400PE), was permitted. Approximately 78 dwellings and a crèche have been completed to date. Most, if not all the dwellings are occupied. The crèche is vacant. I note the previous Board's decision, An Bord Pleanála reference PL08.219918, in connection with development on this site, which was made nine years ago. I believe that circumstances have changed in the interim. I noted that the ground conditions around the tank associated with the wastewater treatment system were waterlogged. In addition, I noted heavy vehicle tracks leading to the treatment system tank, which may indicate the periodic or regular extraction of the contents of the tank. Finally, I noted a perceptible and unpleasant odour in and around the vicinity of the treatment system. All of these issues lend weight to the appellant's submission and lead me to conclude that the system may not be operating effectively.

8.6.2 The applicant has not submitted any information which would confirm that the existing treatment system is operating within appropriate parameters and can accommodate the additional loading. To this end, the planning authority attached condition 16 to the notification to grant permission which required confirmation that

the system is operating properly – see section 3.1 above. I consider that this information is key to allow the development to proceed. If it is the case that the existing treatment system is in any way defective and unable to accommodate the proposed development there is a consequential risk to the environment and specifically a downstream SAC which is situated nearby. Therefore, and in accordance with the precautionary principle, I consider that it is not appropriate to permit a proposed development which may be damaging to the environment and prejudicial to public health. I note a concurrent appeal (PL08.247054) for the construction of 32 houses, a crèche, infrastructure to connect to a future public sewerage scheme and to decommission the existing wastewater treatment system. While, that proposal would obviate the need for the subject appeal to be served by the existing treatment system, the public sewerage scheme is not yet in place and therefore that proposal (PL08.247054) is premature pending the delivery of critical infrastructure. The County Development Plan lists the Kilcummin Sewerage Scheme in Table 7.2 Priority Water & Waste Infrastructure Projects. A timeframe for its delivery is not indicated. I consider that the subject application is premature pending the delivery of the public sewerage scheme.

8.7. Appropriate Assessment

8.7.1 It is noted that the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) is located 300 metres to the south east of the appeal site. The proposed development is located outside any Natura 2000 site and will not result in direct impacts in terms of land-take or removal of habitat concerned. The appeal site however, is serviced by an existing wastewater treatment system located to the south east and approximately 100 metres upstream from the boundary of the SAC. Given the upstream location, the sloping topography of the wider area and the existence of minor watercourses draining to the Deenagh River; direct or

indirect impact source-receptor pathways do exist from the sand polishing filter associated with the wastewater treatment system to the SAC. Section 8.6 of this assessment sets out my concerns with regard to the effective operation of this existing wastewater treatment system. In addition to the concerns raised by third parties and the requirements of the Environment Section of the Council, the planning authority attached a condition which required the submission of a detailed status report concerning the integrity of the wastewater treatment system prior to the commencement of development. This condition would not address any deficiencies in the current treatment system, if no development takes place, and cannot address the lack of environmental information in order to carry out an effective AA screening exercise.

8.7.2 There are a large number of Special Conservation Interests for the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC and the conservation objective for same is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. Given the absence of any information from the applicant, I am not satisfied that the potential for significant effects arising on the said Natura 2000 site, alone or taken in combination, may be ruled out.

8.7.3 The applicant has not submitted an Appropriate Assessment screening report and I have concerns that the proposed development, when taken in conjunction with the additional loading on the existing wastewater treatment system, which may or may not be operating to appropriate standards, will negatively impact upon the SAC which is downstream of the site. I do not have sufficient and adequate information in order to screen the proposed development for Appropriate Assessment. I cannot be certain that Appropriate Assessment issues do not arise and therefore I consider that it is not possible to conclude that the proposed development, individually or in

combination with other plans and projects would not be likely to have a significant effect on a European site.

8.7.4 As I am recommending a refusal of permission on grounds relating to the inadequacy of the existing wastewater treatment system a further reason for refusal related to Appropriate Assessment is also appropriate.

9.0 **Recommendation**

I recommend that planning permission should be refused for the reasons and considerations as set out below.

10.0 **Reasons and Considerations/ Reasons**

1. The Kilcummin Sewerage Scheme is identified in the Kerry County Development Plan 2015-2021, Table 7.2 as a Priority Water & Waste Infrastructure Project. There is no timeline for the delivery of the sewerage scheme for Kilcummin and there are deficiencies in the existing wastewater treatment system. It is considered that the proposed development would be premature by reference to the existing deficiency in the provision of sewerage facilities servicing the area of the proposed development and the period within which the constraints involved may reasonably be expected to cease. The proposed development would, therefore, be prejudicial to public health.

2. On the basis of the information provided with the application and the appeal and which includes substantial evidence in relation to existing deficiencies with the existing wastewater treatment system serving the housing development, and in the

absence of an AA Screening Report, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code 000365 (Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval or permission.

Stephen Rhys Thomas
Planning Inspector

3 November 2016