



An
Bord
Pleanála

Inspector's Report PL08.247045

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| Development | Permission to retain dwelling house, septic tank, boundaries and vehicular access driveway all at Scrahannagaur, Sneem, Co. Kerry |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 16/465 |
| Applicant(s) | Eckhart & Fridrun Muller-Tolk |
| Type of Application | Retention permission |
| Planning Authority Decision | Refuse permission |
| Appellant(s) | Eckhart & Fridrun Muller-Tolk |
| Observer(s) | None |
| Date of Site Inspection | 18/10/2016 |
| Inspector | A. Considine |

1.0 **Site Location and Description**

- 1.1. The proposed development site is located within the townland of Scrahannaagaur, Sneem, Co. Kerry, in a rural area approximately 1km to the north of the village of Sneem and approximately 26km to the west of Kenmare. The site is accessed off the R568 Regional Road and shares its access with a second house on the landholding. The general area can be described as a rural landscape with a pattern of scattered residential development. The landscape is undulating with areas of rocky outcrop evident.
- 1.2. The site itself has a stated site area of 0.288ha and is rectangular in shape. It is bounded by timber post and rail fencing to the north west which acts as the site boundary for the existing house to the north west of the site. The roadside boundary comprises a post and wire fence and the site is generally flat and level. The appeal site has a stated area of 0.44 hectares and is occupied by the existing house and its associated services.

2.0 **Proposed Development**

- 2.1. Permission is sought for the retention of dwelling house, septic tank, boundaries and vehicular access driveway all at Scrahannagaur, Sneem, Co. Kerry.
- 2.2. The proposed development seeks to amend the previously permitted site from 0.64ha to 0.44ha and to retain the existing vehicular access to the site. Under PA ref 02/1531, permission was granted for the construction of the house on a site of 0.64ha and with an access to the north east onto the regional road. As constructed, the house is serviced by the existing vehicular access, permitted approximately 25 years ago, which serves the second house on the overall landholding. The house is served by an existing septic tank and water from a private well.
- 2.3. The site itself as permitted, has a short road boundary comprising the permitted access area, approximately 16m in total, and the main body of the site sits behind

the road side field. The overall landholding includes the block of lands which are bound by the public road.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the development as proposed for the following reason:

It is considered that the traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard, because the vehicular entrance to the site is located onto the heavily trafficked Sneem to Molls Gap Regional R568 roadway, at a location where sightlines are severely restricted. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

The report of the area planner can be summarised as follows:

- The initial Planners report considered the proposed development in terms of the policy requirements of the County Development Plan and the planning history associated with the site. The report advises that 'A safer, more suitable vehicular entrance was granted permission under the original grant of permission under PI. Ref. 02/1531.' The report concludes that the granting of amended site boundaries would result in a negative impact to the residential amenities due to the loss of the area supposed to provide for the vehicular entrance. The Planning report recommended that permission be refused.

3.3. Other Technical Reports

Roads Section: Advises that sight distances at the entrance are inadequate,

3.4. Third Party Observations

There are no third party observations noted on the PA file.

4.0 Planning History

4.1. The following is the relevant planning history relating to the subject site:

PA Ref. 98/1450: Outline planning permission granted in 1998 to Eckhart Muller Tolk for permission to erect a dwelling house with a septic tank and puraflo wastewater treatment unit.

PA Ref. 02/1531: Permission granted in 2002 to Siegfried Muller Tolk approval to erect a dwelling house with a septic tank and puraflo wastewater treatment unit, subject to conditions. Of relevance are the following:

3: Only one dwelling house shall be erected on the site as shown outlined in red on site map received on 24/6/2002.

Reason: To regulate and control the layout of the development.

7: Existing front boundary fence shall be demolished and carted away along the public road boundary. Vehicular access to this site shall be located and designed so as to maximise sight distance in accordance with the requirements of the District Roads Engineer and shall be recessed at least 6 metres from the centre of the existing front boundary fence.

Wing walls forming the entrance shall be erected to a height of not more than 1 metre over existing road level, and shall be splayed at an angle of 45° to the line of the front fence. Any vegetation interfering with sight distance at site entrance shall be cut back.

Reason: To avoid a traffic hazard.

8: Any new front boundary fence and wing walls shall be constructed in sod and stone or native stone.

Reason: To integrate the structures into the surrounding area.

4.2. Planning History for adjacent sites:

South:

PA Ref. 98/1426: Permission granted to Eckhart Muller Tolk for permission to erect a dwelling house.

North:

PA Ref. 99/704: Outline planning permission granted to John O'Brien for the construction of a house, septic tank and associated site works.

PA Ref. 04/2038: Planning permission refused to John O'Brien for the construction of a house, septic tank and associated site works for two reasons relating to visual impact and site suitability.

PA Ref. 07/2372: Planning permission granted to John O'Brien for the construction of a house, septic tank and associated site works.

PA Ref. 07/92372: In 2012, John O'Brien sought permission to extend the duration of the permission granted for the construction of a house, septic tank and associated site works. Permission was refused on the grounds that the proposed development no longer complied with the requirements of the EPA Code of Practice 'Wastewater Treatment & Disposal Systems Serving Single Houses (p.e ≤ 10)'

5.0 Policy Context

5.1. National Policy Context

The Sustainable Rural Housing Guidelines issued by the Department of the Environment Heritage and Local Government, April 2005 are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas. The Guidelines identify categories of rural area types which will require differing settlement policies in terms of rural housing. In this regard, the subject appeal site is located within an area described as predominantly dispersed settlement area. The key requirements in these areas should be to support the maintenance of a vibrant population, including the maintenance of the integrity and viability of essential rural services and facilities while also protecting valuable assets such as important landscape quality and the natural and cultural heritage including the linguistic integrity of gaeltacht areas.

5.2. Development Plan

The Kerry County Development Plan, 2015-2021 is the relevant policy document pertaining to the subject site.

5.2.1. Chapter 3; Settlement Strategy

The subject site is located within an area zoned Rural General and in this regard, Section 3.3.2.1 of the Plan is considered relevant. The Plan provides that '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 provisions of Section 3.3.1 and objectives RS-1 to RS-4 and Table 3.7 below.' In addition, I consider that the following policy objectives are relevant:

RS-4: Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.

5.2.2. Chapter 12: Zoning & Landscape:

Landscape Protection:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

ZL-4: Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of this Plan.

Section 12.3.1 deals with zoning designations which includes Rural General. It is provided that developments within such areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development. The Plan further provides that 'proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.'

5.2.3. Chapter 13 Development Management - Standards & Guidelines:

Section 13.4 of the Plan provides Standards for Residential Development in Rural and Non-Serviced Sites. In terms of boundary treatments, the plan states:

The line of existing roadside boundaries in rural areas should be retained where possible, particularly along scenic roads, subject to traffic safety considerations, whereby setback may be required. The area between the new and old roadside boundary shall be levelled, drained and surfaced in a suitable material and kept free of any obstruction. If the front boundary or a section of the front boundary is removed it shall be reinstated with the use of indigenous locally sourced planting and materials. Existing sod and stone boundaries should be reinstated as existing.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal against the decision of Kerry County Council to refuse permission for the retention of the vehicular access driveway as constructed and to retain house on the revised site boundaries. The grounds of appeal presents a background to the overall landholding and the development which has occurred. The grounds of appeal can be summarised as follows:

- The applicant wishes to reduce the site area slightly, from 0.64ha to 0.44ha.
- The purpose of application ref 16/465 was to regularise matters in terms of the existing driveway location and a desire to reduce the relevant site area slightly.
- The refusal appears to concern the vehicular access rather than a proposed reduction in site area or revised site boundaries.
- The existing access is fully compliant with a previous permission for the original dwelling on the site, and has been in existence for c20 years.
- The reasons for using the shared entrance, rather than create a new entrance were:
 - Sight lines were deemed better at the existing entrance.
 - It was economically more viable to use an existing access rather than construct a new one
 - To prevent further disruption to the natural roadside boundary.
- The reason for refusal suggests that a proposed vehicular entrance is intended or that the existing access is not compliant – this is not the case.
- There is no intensification of traffic.

- The access is required to prevent the dwelling being land-locked. A refusal does not limit or block-off this entrance but requires an additional entrance onto a busy road with limited sightlines, constituting a traffic hazard.
- The use of a shared access is support in the publication “Building a house in Rural Kerry – Design Guidelines” published by Kerry County Council.

6.2. **Planning Authority Response**

The PA has not responded to this third party appeal.

6.3. **Observations**

There are no observes noted.

6.4. **Further Responses**

There are no further responses noted.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the proposed development
- Roads & Traffic Issues
- Other issues
- Appropriate Assessment

7.2. Principle of the Proposed Development:

The Board will note that the nature of the appeal to be considered relates to a number of elements as follows:

- Retention of the vehicular access driveway as constructed
- Retention of dwelling house, septic tank and associated site works
- Revised site boundaries.

In light of the above, I would note that planning permission was granted for the existing house on the site in the past. In this regard, the principle of amendments might be considered acceptable, subject to compliance with the conditions of planning associated with the original planning permission. The issue of roads, traffic and access will be dealt with further below. In this regard, the following is relevant:

- The house itself has been constructed on the site generally in accordance with the requirements of conditions 2, in terms of location on the site, condition 4 in terms of distance from boundaries and condition 5 in terms of finishes and orientation, of Permission Ref 02/1531. In terms of the retention of the dwelling house, I have no objection.
- In terms of the retention of the septic tank, the Board should note that I could not locate same on the date of my inspection. It is also noted that condition 6 of the grant of permission, PA ref 02/1531 required the installation of a Puraflo system. No details of same were noted on the file.
- In terms of the application to retain revised site boundaries, the Board will note that under PA ref 02/1531, permission was granted for the construction of the house on a site of 0.64ha and with an access road located to the north east of the house and site and accessing onto the regional road. In amending the site boundaries, the permitted access could not be constructed as conditioned. The issue of the access will be discussed further below, however, in principle, I would have no objection to the reduction in the site area as proposed. The proposal seeks to reduce the site area by 0.2ha, from

0.64ha to 0.44ha. There is no indication as to the intended use of the 0.2ha area to be omitted from the site and I have to consider that there is the possibility that by permitting the reduced site area in the order of 0.2ha, the intention would be to provide a further development site. However, I would refer the Board to the conditions of the previous planning permission and in particular, condition 3 which provides that only one dwelling house shall be erected on the site as shown outlined in red on site map received on 24/06/2002. The amended site boundaries include the area where the septic tank is indicated as being located and therefore, in principle, I have no objection to the proposed amended site boundaries.

7.3. Roads & Traffic Issues:

The issue arising in relation to the subject appeal, and the primary reason for refusal for the proposed development by Kerry County Council relates to roads and traffic issues. As constructed, the existing house is serviced by the existing vehicular access, permitted approximately 25 years ago, which also serves the second house on the overall landholding. Having undertaken a site visit, there is no doubt that the sight distances available at the existing entrance are restricted and the Board will note that there is a solid white line on the regional road in the vicinity of the entrance. The Planning Authority refused permission for the development for the following reason:

It is considered that the traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard, because the vehicular entrance to the site is located onto the heavily trafficked Sneem to Molls Gap Regional R568 roadway, at a location where sightlines are severely restricted. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

The appellant has argued that the reason for refusal suggests that a proposed vehicular access is intended or that the existing access is not compliant, which is not the case. The decision was taken to 'share' the permitted access rather than construct a new one as permitted. This entrance has been in place for +20 years. Given that time the situation has been in place, the purpose of this application and appeal is to regulate matters for the site. A refusal of permission does not limit or 'block off' the entrance. The sight distances available at both the existing entrance, currently used, and the permitted entrance under 02/1531, are similar, although the permitted entrance would appear to have slightly better visibility.

Chapter 13 of the Kerry County Development Plan, 2015 deals with Development Management Guidelines and Standards. This purpose of this section of the Plan is to supplement the policies and objectives cited in the other chapters of the development Plan regarding the appropriate form of new development and to ensure that new development is of a high quality and satisfactorily relates to the character, scale, layout and form of the area in question.

Of particular note is section 13.4 which deals with Residential Development in Rural and Non-Serviced Sites. The topic of entrances is discussed and provides that 'opportunities for shared use of access or combining access points should be availed of.' In this regard, it might reasonably be considered that the use of the existing entrance to serve the permitted house accords with this standard. The appellant has noted that the volume of traffic generated at the site will be no different from that which has existed since the house was constructed. I also must acknowledge the number of years that the house has used the existing access, seemingly without conflict or issue with other road users.

While I acknowledge the concerns of the Roads Engineer in terms of the sight distances at the existing entrance, the entrance is a permitted and long standing entrance on the R568 regional road. In this regard, I consider that the proposed development could be accommodated as proposed for retention. That said, the existing entrance is clearly substandard to accommodate the level of development

proposed. The Board will note that the applicant has control over the lands immediately adjoining the entrance, although said lands are not included within the red line site boundary as submitted. Should the Board be minded to grant planning permission in this instance, I consider that the existing entrance would require to be improved in order to maximise sight distances, particularly to the south. Such improvements may require the removal of vegetation.

It is regrettable that the appellant had not considered improvements to the existing entrance in support of the proposed amendments and revisions to the planning permission as granted, and in this regard, I am concerned that conditioning amendments to the existing entrance would not be sufficient in this instance. Indeed, in the absence of appropriate drawings and details and consent, it is difficult to know the amount of vegetation to be removed and the potential impacts associated with same. In this regard, I consider that planning permission should be refused for the elements of retention on the basis of traffic safety and inadequate sightlines.

7.4. Other Issues:

In terms of other issues, should the Board disagree with the above and consider it appropriate to condition improvements to the existing entrance as part of a grant of planning permission, Condition 3 of the primary planning permission, PA ref 02/1531, should be included in such a decision. Condition 3 provides that one house only shall be constructed on the site as shown outlined in red on the site map received on the 24/06/2002.

7.5. Appropriate Assessment:

Having regard to the nature of the proposed development and the nature of the receiving environment 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'.

8.0 Recommendation

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

9.0 Reasons and Considerations/ Reasons

Having regard to the information presented in support of the proposed development, and notwithstanding the existing access arrangements, the Board is not satisfied that the existing entrance is suitable or adequate in its current form, to appropriately or safely accommodate the level of traffic movements generated by the existing developments. The access is located on the heavily trafficked regional road, the R568, at a location where the maximum speed limit applies, where there is a solid white line in the centre of the road and where sight distances are restricted. It is considered that a grant of planning permission in this instance would endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector
27th October 2016