



An
Bord
Pleanála

Inspector's Report PL08.247054.

Development	33 housing units, detached crèche, decommission wastewater treatment plant and construct foul sump and pumps.
Location	Pairc Chuimin, Kilcummin, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/247.
Applicant(s)	Barth O'Neill.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party versus decision.
Appellant(s)	Barth O'Neill.
Observer(s)	Denis Duggan.
Date of Site Inspection	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, public 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 most southerly section of the existing housing estate to the south east of existing rows of semi-detached dwellings. The northern section of the appeal site comprises a construction compound, inactive at present. The remaining portion of the site to the south is overgrown with vegetation and accommodates the wastewater treatment system. The ground conditions around the tank associated with wastewater treatment system were very wet and there was a noticeable odour in the vicinity. The south eastern and south western margins of the site are overgrown with mature vegetation and the areas adjacent to this portion of the site comprises scrub farmland. The River Deenagh is located approximately 145 metres due east of the southern tip of the appeal site. The overall estate is well maintained with well supervised public open spaces and play areas.

2.0 Proposed Development

- 2.1. The construction of 33 dwelling units, comprising:
 - 1 detached house.

- 28 semi-detached houses.
- 3 terraced houses.
- 1 detached crèche building.

2.2. The development will also include the decommissioning of the existing wastewater treatment plant and sand polishing filter and the construction of foul sump and pumps with connection to the proposed Kilcummin Sewerage Scheme.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority refused permission for a single reason. The development would be premature pending the delivery of a public sewerage system to serve the village of Kilcummin.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The initial Planner's report includes:

- an EIA screening report, which concludes no requirement for EIA,
- an AA screening report, which concludes no potential for significant effects to Natura 2000 sites,
- a request for further information with regards to the provision of crèche facilities, the Kilcummin Sewerage Scheme and the provision of a footpath from the estate to Kilcummin Village.

3.2.3. The second Planner's report outlines:

- that the location of the proposed crèche is not optimum,
- a public sewerage system is not in place and so therefore the development is premature,
- and that a special contribution of over €140,000 has been paid with respect to the provision of a footpath link from the east of the estate to the village.

3.2.4. Other Technical Reports

Housing Estates Unit Report; refers to a number of standard technical requirements which require consideration as part of the assessment.

County Archaeologist Report; outlines no impact to archaeology despite size of site.

3.3. Prescribed Bodies

Irish Water Report (14 July 2016); recommends the refusal of planning permission as the development is premature pending the completion of the Kilcummin Sewerage Scheme.

Health Services Executive Report; recommends the attachment of standard technical conditions with respect to the crèche facility.

3.4. Third Party Observations

There were a number of observations from residents of Pairc Chuimin estate. Concerns raised are broadly aligned with the issues outlined in the observations made on the appeal by Denis Duggan.

4.0 Planning History

4.1. Subject site

Planning register reference number 08/44 and An Bord Pleanála reference number PL08.229829, permission granted (November 2008) for 32 houses, decommission wastewater treatment systems and construct sump and pipes for connection to the public sewerage system.

Planning register reference number 09/297, permission granted (April 2009) to construct 7 houses to replace those granted under 08/44 and ABP 08/229829.

Planning register reference number 09/511, permission granted (June 2009) for revisions to houses types granted under 08/44 and ABP 08/229829.

Common to the above applications, conditions 2, 5 and 3 respectively state the following:

Construction work on the site shall not commence until such time as the proposed Kilcummin Sewerage Scheme is completed and commissioned.

Reason: In the interests of orderly development.

4.2. Adjacent sites

Planning register reference number 16/191, current appeal PL08.246784, convert an existing building constructed as a crèche to two semi-detached dwellings.

Planning register reference number 16/234, current appeal PL08.246790, Retain foundations and complete six semi-detached dwellings and construct a detached dwelling.

Planning register reference number 16/744, to construct 6 houses, further information requested (22 September 2016) in relation to wastewater treatment for the proposed houses.

5.0 Policy Context

5.1. Development Plan

5.1.1. 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

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.
- Encourage the sustainable expansion in the range and number of commercial services within the village which in turn will provide local employment and improve the quality of life of the local community.

5.1.2. 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.

Section 13.3 Standards for Residential Developments in Urban Areas

Section 9.2 Social inclusion and 9.3 Community Facilities/Infrastructure sets out broad objectives with regard to childcare facilities, contained within SC-8 and SC-18.

Section 9.4 Childcare Facilities, outlines in detail the Council's objectives with regards to the availability and accessibility of adequate childcare in the community. National guidelines are also cited – Childcare Facilities: Guidelines for Planning Authorities (DoEHLG June 2001).

Appendix 1 contains the relevant land use zoning maps.

5.2. **Natural Heritage Designations**

The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) is located approximately 65 metres to the south east of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- That this development has already been granted permission under a previous planning application and under a Board decision – PL08.229829, no reason why it should not be granted permission again.
- Sets out the background to the delivery of the Kilcummin Sewerage Scheme and states that, according to their knowledge, it will be commissioned in 2018. In addition, the use of the word premature in the planning authority's reason for refusal implies that plans do exist for a scheme.
- Cites an adjacent extension of duration permission (08/9277) for 67 houses in 2013, in which a condition permitted construction but not occupation of houses until the Kilcummin Sewerage Scheme is completed. Claims unfair treatment and inconsistency of decision making.
- Kerry County Council has granted permission for 7 dwellings (16/234 on appeal) and a current application for 6 dwellings is on further information (16/744).
- There should be consistency of decision making from the planning authority and legal cases are cited to demonstrate that the current application is identical to the previous permission (08/44). The rationale should be given as to why a planning authority should depart from a previous decision.
- The decision to refuse is out of line with government policy, specifically Rebuilding Ireland - Action Plan for Housing and Homelessness.
- Requests the Board to grant permission with a condition to synchronise with the commencement of sewerage infrastructure works, to allow the construction of units and permit their occupation in tandem with the commissioning of the sewerage scheme.

6.2. Planning Authority Response

None.

6.3. Observations

Denis Duggan, Clashnagarrane, Kilcummin, Co Kerry, has submitted observations contained in 19 separate but inter-connected issues. The following is a summary of the issues raised:

- The appeal should not be assessed as already judged and the same outcome as before arrived at. The current application is different from the previous, it now includes a crèche and a new development plan is in force.
- Reference to English legal cases is misleading.
- The issues raised by the 12 objectors to the planning application should be taken into account.
- Lack of a footpath between Pairc Chuimin and the village results in an unsafe pedestrian environment and should be used as a reason for refusal. The application contains false and misleading information with regard to the lack of a footpath. The increase in houses will increase the dangerous nature of a road without a proper footpath link to the village. Drawings attached to previous permissions inaccurately showed the footpath link and Kerry County Council should have refused permission on this basis.
- 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 inclusion of recent planning application outcomes is misleading and shifts blame to Kerry County Council for bad planning.
- The term quasi-judicial should not be applied to Kerry County Council and should be reserved for the courts.
- The existing septic tank system is not functioning properly. The system has failed and requires its contents to be removed at frequent intervals by vacuum tankers which, in itself, presents a hazard to the occupants of the estate.

- The location for the proposed crèche at the far end of the estate is not a suitable location.

6.4. Further Responses

None.

7.0 Assessment

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

- Concurrent Appeals
- Previous planning permissions.
- Kilcummin Sewerage Scheme.
- Phased Development.
- Government policy to deliver houses.
- Roads and Footpaths.
- Appropriate Assessment.

7.2. Concurrent Appeals

7.2.1. The Board is 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 PL08.246790 for 7 dwellings 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.

7.3. Previous planning permissions.

7.3.1. The applicant sets out the planning history of the site which includes a grant of permission from the Board (PL08.229829, dated 26 November 2008) for 32 dwellings which included a condition that required construction work not to commence until such time as the proposed Kilcummin Sewerage Scheme is completed and commissioned. Two subsequent planning applications were granted by Kerry County Council in 2009 which also included the conditional requirement to await the Kilcummin Sewerage Scheme. This was considered to be a reasonable

condition as the sewerage scheme at that time was thought to be deliverable within two years.

- 7.3.2. The applicant suggests that the decision to grant permission to extend the appropriate period for residential development on a neighbouring site, with a condition in relation to the sewerage scheme, demonstrates an inconsistency of decision making on the part of the planning authority. This has little bearing on the appeal on hand. Each development proposal has to be considered on its own merits.
- 7.3.3. On the basis that development proposal has already been approved, and with no evidence to indicate why the planning authority should now refuse permission. The applicant goes on to cite the doctrine of res judicata and illustrates their point through the use of numerous legal judgments in this jurisdiction and in the United Kingdom. I am of the view that the current proposal before the Board is materially different to the previous permissions on the site, in the following respects; a new County Development Plan is in force; a new Local Area Plan is in force; the proposal includes for a standalone crèche building; the recommendation to refuse permission from Irish Water; and there are matters to do with Appropriate Assessment screening which require attention. In addition, the timeframe for the Kilcummin Sewerage Scheme has not been officially established and its delivery date remains uncertain.

7.4. Kilcummin Sewerage Scheme

- 7.4.1. Previous permissions for extensions to Pairc Chuimin on this site have been permitted with a condition which requires the delivery and operation of the Kilcummin Sewerage Scheme. None of the previous permissions and current applications have indicated an official programme of delivery for the sewerage scheme and there is no information on this file which provides an official timeline for delivery. The applicant has supplied the partial minutes of the June 2016 Killarney Municipal District Meeting in which it is stated that plans are still at the design stage for the sewerage scheme. In this respect, the only definitive information with regard to the Kilcummin Sewerage Scheme is that it does not exist and that Irish Water have recommended a refusal of permission based upon the prematurity of the housing proposal pending the delivery of the infrastructure. Given the lack of any official information with regard to the timeframe for the Kilcummin Sewerage Scheme, it would not be appropriate, in my

view, to grant permission with a condition that ties the commencement of development to the construction and commissioning of the sewerage scheme.

7.5. Phased Development

- 7.5.1. The applicant has requested that a condition be attached to a permission, that allows for the construction of the proposed dwellings in tandem with the construction of the Kilcummin Sewerage Scheme. This would allow for the occupation of units as soon as the sewerage scheme is commissioned. Drawing number PC2016/213 (Storm and Foul Services Layout, dated March 2016), shows the location of the existing wastewater treatment system compound. Part of the proposed public open space and Sites 111 to 116 are located within that compound and sites 93, 109 and 110 are located in close proximity. I am not satisfied that this drawing sufficiently details the extent of the existing wastewater treatment system and its sand polishing filter area. A safe buffer zone around the system has not been shown and I cannot determine what would be an appropriate or safe distance to set in order to ensure the continued and effective operation of the system. Therefore, I conclude that it would not be appropriate to attach a condition which allows the development to commence on a phased basis, when the delivery of critical infrastructure such as foul water treatment is uncertain.

7.6. Government policy to deliver houses

- 7.6.1. The appellant quotes national policy with respect to the delivery of housing, specifically; Rebuilding Ireland - Action Plan for Housing and Homelessness, and states that the decision to refuse permission by Kerry County Council is out of step with government policy. The Action Plan is not guidance issued to planning authorities, under section 28 of the Planning and Development Act 2000 (as amended) and therefore has less influence in the decision making process of the planning authority. The Action Plan for Housing and Homelessness, seeks to address the housing crisis through a five pillars, addressing homelessness, accelerating social housing delivery, building more homes, improving the rental sector and utilising existing housing. Of relevance to this application is the discussion around blockage to development, in this case a deficiency in infrastructure. To this end the Action Plan states that funds have been earmarked for the Local Infrastructure Housing Activation Fund which should bring forward

critical infrastructure to allow housing to progress. In the context of this appeal, a sewerage scheme is progressing through design stage, however, a timeline for its delivery is uncertain and will be subject to a prioritisation methodology for investing in network extensions of water services for key strategic sites. The construction of these dwellings cannot happen in any case until critical infrastructure is in place and it would be unreasonable to attach a condition which prevents development for an indeterminate amount of time.

7.6.2. Though the delivery of housing is a key consideration, critical infrastructure must be in place and it would appear that Kerry County Council and Irish Water are working to this end. Therefore, in my opinion Kerry County Council is operating in accordance with national policy, by working to deliver key infrastructure. As already outlined in section 7.4, I consider that the proposal for 33 houses and a crèche is premature pending the delivery of the Kilcummin Sewerage Scheme.

7.7. Roads and Footpaths

7.7.1. An observer raises serious concerns with regard to the lack of footpath facilities between the housing estate and Kilcummin Village, in addition to general inadequacies in the wider road network. 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. The current planning application required further information with regards to the provision of a footpath. The applicant responded by stating that the payment of a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 (as amended) on 04/1528 had been submitted to the Council. 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 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 in accordance with the entirety of section 48 of the Act, specifically subsection (12) (a), (b) and (c).

7.8. Appropriate Assessment

7.8.1. The appeal site is located approximately 65 metres from the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365). The overall site slopes downwards towards the Deenagh River, which forms part of the river catchment. The existing housing scheme is served by a wastewater treatment system with a sand polishing filter. The treatment system is located within the appeal site and will be decommissioned upon the delivery of a public sewerage system. Details have not been submitted with the planning application or the appeal with regard to the decommission methodology. However, it is anticipated that this matter would not necessitate in itself the requirement for a Stage 2 – Appropriate Assessment; as the outcome will be the removal of a potential impact to the SAC. In this context and having regard to the nature and scale of the development it is proposed to construct as part of an extension to an existing housing estate environment, specifically the proposal to decommission an existing wastewater treatment system and sand polishing filter and connect to a public sewerage system, 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

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.

Stephen Rhys Thomas
Planning Inspector

3 November 2016