



An
Bord
Pleanála

Inspector's Report PL08.247117

Development	Permission to erect two dwelling houses, at Waterville, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/521
Applicant(s)	Clanford Property Ltd
Type of Application	Permission
Planning Authority Decision	Grant permission
Appellant(s)	Ann Courtney
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 development boundaries of the town of Waterville, Co. Kerry and located on the local cul-de-sac road to the east of the town leading towards the GAA pitch and Lough Currane. The area, as advised, is located on the development boundary for Waterville and immediately adjacent to an existing housing estate to the west. To the east and north, residential development becomes more sparse
- 1.2. The site itself has a stated site area of 0.1ha and is rectangular in shape. It is bounded by timber post and wire fencing to the north and west. The roadside boundary comprises a post and wire fence and the site is generally flat and level at road side with an incline towards the east and south east of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of 2 dwelling houses at Waterville, Co. Kerry.
- 2.2. The proposed development seeks to construct two houses adjacent to the existing holiday home development and the design of the proposed houses reflect that of the existing houses. The development proposes the construction of two two storey houses which will have a stated floor area of 153m² each. The houses will comprise 4 bedrooms, including one at ground floor level.
- 2.3. The outside of the proposed house sites will comprise brick paving and a small garden area to the front with a rear back garden with a depth of 10m, measured from the main rear wall of the houses. Given the nature of the site, the proposed external finishes of the houses reflect those of the existing houses in the adjacent estate.
- 2.4. The access to the site is via a local road which also provides access to the GAA pitch and lake. The road is narrow but adequate to accommodate the additional two houses.

2.5. It is proposed that the dwellings will be serviced from the existing public water services in the area.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to grant planning permission for the development subject to a number of standard conditions, including condition 4 which states as follows:

- (a) The use of the proposed dwellings shall be as primary permanent all year round private residences.
- (b) The proposed dwellings shall not be used as holiday homes or second homes.

Reason: In the interests of 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 Local Area Plan and the planning history associated with the site. The report advises that the subject site is not specifically zoned in the Waterville Local Area Plan and that there is no issue in terms of traffic, effluent disposal, surface water disposal or residential amenity. In addition, it is considered that while occupancy is not an issue, a condition regarding their use as permanent dwellings to be included in any grant of permission to comply with the LAP. The Planning report recommended that permission be granted.

3.3. Other Technical Reports

Housing Estates Section: Advises conditions to be included in a grant of permission.

Irish Water: Advises that connections to public services are available.

3.4. Third Party Observations

There is 1 no third party observation noted on the PA file. The issues raised are summarised as follows:

- The area was to be retained as a natural field to preserve the rural character of the development under Planning Register no. 04/4429.
- Issues raised regarding the disposal of waste water arising from the development.
- Issues raised regarding the dealing with storm water arising from the development.
- Issues raised in relation to the Bond associated with the primary permitted development.
- The houses will probably be used as holiday homes contrary to the requirements of the Waterville LAP.
- Issues raised in relation to the road and increase in traffic from the development.
- Proximity of the site to an area of Special Conservation Interest.

4.0 Planning History

The following is the relevant planning history relating to the subject site (and adjacent lands from which the current site is taken):

PA ref 98/2852: Outline Permission for 24 holiday units on the same site granted on 6/7/01 comprising 16 semi-detached and 8 detached dwellings.

ABP ref PL08.205719 (PA ref ref 03/1452): Permission sought for the construction of 30 semi-detached houses for holiday home development. Ultimately, permission was granted for the construction of 24 no dwelling houses only on the overall site area of 2.449ha. Condition 1 of the grant also noted that 'the proposal to construct 26 houses would give rise to over intensification of development at this site which is located in a Secondary Special Amenity Area, would seriously injure the amenities of the area and would depreciate the value of property in the vicinity.

PA Ref. 04/4429: Permission granted for the construction of 24 houses. The development site as submitted included the current appeal site. Condition 17 of the grant of permission stated as follows:

- (i) The designated open space areas shall be kept free of development and shall not be utilised for the interim storage of building materials, etc. throughout all phases of site development and construction works permitted under this grant of permission.
- (ii) The overall site shall be landscaped and planted with indigenous trees and shrubs compatible with the prevailing soil and climatic conditions and in accordance with the details received on 31/03/2005.
- (iii)

Reason: In the interest of residential amenity and maintaining the visual amenities of the area.

PA Ref. 05/4000 & PA Ref 05/4377: Permission sought for the construction of 10 houses – including the area the subject of current appeal. Both applications were deemed incomplete

PA Ref. 06/259: Permission sought for the construction of 10 houses (as above) but deemed withdrawn prior to any decision issuing.

PA ref 06/527: Permission sought for a development consisting of (a) the use of the storage tank permitted under condition 16 of planning ref. No. 04/4429, as a temporary holding tank to serve the 24 no. dwellings permitted under ref. No. 04/4429 and (b) permission is also sought for the occupation of the 24 no. dwellings permitted under planning ref. No. 04/4429. Application deemed withdrawn prior to a decision issuing.

5.0 Policy Context

Caherciveen, Waterville & Sneem Functional Areas Local Area Plan, 2013-2019

The subject site is located within the settlement boundary of Waterville. There is no specific zoning afforded to the site, but is within the area identified for first development. The Plan, at section 2.3.8.2 deals with future residential developments and seeks to avoid leapfrogging of development to ensure the development of a compact urban form.

Section 2.3.8.3 deals with non-permanent residential developments and seeks to promote a sense of community by ensuring that lands are zoned for permanent residential purposes only. In this regard policy objective H-2 is considered relevant which seeks to 'ensure that all new residential units are located within the development boundary on residential zoned lands and are for permanent occupancy use only.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third party appeal against the decision of Kerry County Council to grant permission for the construction of two houses on the subject site. The grounds of

appeal reflect the objections raised in the course of the PAs assessment of the proposed development. I refer the Board to section 3.4 above for details.

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**

The first party has responded to the third party appeal. The submission is summarised as follows:

- Permission associated with PL ref 04/4429 did not reference or give directions on land outside planning application boundary.
- The design capacity in the waste system is in excess of the requirements for the existing 24 houses. Due to recent investment in the foul waste water treatment system, there is adequate capacity.
- Rain and surface water harvesting system has been included in the design proposal.
- The applicant has carried out surveys and works in accordance with the requirements of the estates unit of Kerry Co. Co.
- The use of the two dwellings is not conditioned by the PA. There is a demand for family units in Waterville.
- The development has allowed for the widening of the public road.
- The SAC is more than 130m from the development.

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
- Planning History
- Servicing, Roads & Traffic Issues
- Other issues
- Appropriate Assessment

7.2. **Principle of the Proposed Development:**

The proposed development seeks to construct two dwelling houses on serviced lands within the settlement development boundaries of the town of Waterville in west Kerry. The development proposes to construct two dwellings which will reflect the design and scale of those existing houses in the permitted holiday home development immediately to the west of the site. The subject site comprises part of the original development site associated with the holiday home development. The Local Area Plan applicable in this instance identifies that the site is located within the settlement boundary of Waterville and on lands with no specific zoning afforded to it.

The intended use of the proposed houses was not specified in the submitted planning application, and the Board will note the concerns of the third party appellant in this regard. The first party, in their response to the third party appeal suggests that the Planning Authority did not include a condition in this regard which is clearly not the case. Condition 4 of the grant of planning permission clearly states that the proposed houses are to be occupied as permanent residents and are not to be used as second or holiday homes. Having regard to the policies contained in the LAP, H-2

in particular, I would concur with the inclusion of such a condition in the event that the Board decides to grant permission in this instance. While I note the concerns of the third party appellant in relation to the enforcement of this condition, this is not a matter for the Board. In principle, I would consider that there is no objection to the proposed development of houses on the subject site.

7.3. Planning History:

There have been a number of planning applications in relation to the subject site. The Board will note that condition 17 of PA Ref. 04/4429 required that the designated open space areas shall be kept free of development and shall not be utilised for the interim storage of building materials, etc. throughout all phases of site development and construction works permitted under this grant of permission, in the interest of residential amenity and maintaining the visual amenities of the area. The third party appellant has cited this condition in the grounds of appeal submitting that the plans presented for the 04/4429 development clearly indicated that 'the adjacent land to be retained as a natural field preserving the rural character of the development'. In addition to the above, I would note that the development was amended to relocate 3 houses from this area, due to the elevated nature of the landscape at this location towards the rear (south east of the site).

In addition to the above, the Board, under ABP ref PL08.205719 (PA ref 03/1452) granted, as per condition 1 of the permission, for the construction of 24 no dwelling houses only on the overall site, noting that 'the proposal to construct 26 houses would give rise to over intensification of development at this site which is located in a Secondary Special Amenity Area, would seriously injure the amenities of the area and would depreciate the value of property in the vicinity.

It is therefore considered by the third party appellant that a grant of planning permission for the proposed two houses would contravene the above stated conditions. While I accept the inclusion of the conditions at the time as wholly appropriate given the nature of the landscape, I am inclined to agree with the

planning officer that the location of the site within currently zoned lands which are serviceable by public water and sewer mains, also needs to be considered. I accept that the reason for the inclusion of the above condition in the grant of permission associated with 04/4429, and indeed the amendment of the original site layout to relocate the three houses on the site to the roadside (immediately adjacent to the current proposed site) was more to do with visual impact than anything else and it might reasonably be considered that the current proposal does not impact on the main body of this elevated land area.

The current Local Area Plan for Waterville seeks to encourage residential development within the defined settlement boundary and in principle, the proposed development is acceptable. The subject proposed development affects the lower lying, roadside area of the overall site and in my opinion, a grant of permission in this instance would not militate against the principle reasoning and logic behind condition 17 of decision 04/4429, or condition 1 of ABP ref PL08.205719 (PA ref 03/1452). A grant of planning permission would not significantly impact on the existing visual amenities of the area and would contribute to the provision of permanent residences within the community of Waterville, close to services, in accordance with the LAP and national guidelines.

7.4. Servicing, Roads & Traffic Issues:

7.4.1. Servicing:

The appellant has indicated that there are ongoing concerns associated with the existing development adjacent to the subject site, and to which the current proposed development is dependent upon. With regard to water services, the appellant considers that appropriate details have not been provided to deal with waste water arising from the two proposed houses. I note that the PA and Irish Water have no concerns in this regard. In addition, the Waste Water Treatment Plant has been upgraded in the recent past and it would appear that there is no issue with capacity in terms of two houses connecting. Further, no issues are raised with regard to the

management of surface waters arising. In this regard, I have no objection to the proposed development.

7.4.2. Roads & Traffic:

The subject site fronts onto a local cul-de-sac road which runs from Waterville in an easterly direction towards the local GAA club facilities and Lough Currane. While I accept that the road narrows to the east of the site, I do not consider that the development of two houses will give rise to any significant increases in traffic movements, which would give rise to a traffic hazard. Travelling speeds along this urban road are slow and adequate sight distances are available at the proposed entrances to the houses.

7.5. Other Issues:

In terms of other issues, the appellant has raised concerns regarding difficulties with the Bond for the services for the previous planning permission, 04/4429. This is a matter for the planning authority.

In addition, the Board will note the comments of the Estates Unit of Kerry County Council with regard to the depth of the rear gardens. The site layout as submitted indicates that the rear gardens will be 10m in length from the main rear wall of the houses, and have an estimated area of 140m², including the rear paved / patio areas. In terms of the requirements of the Kerry County Development Plan, 2015 in relation to private open space provision, the following is relevant:

- On green field sites outside of town centre areas dwellings shall be provided with not less than 48m² of private open space.
- A minimum of 22 metres shall be generally provided between directly opposing first floor habitable rooms. This may be reduced subject to good design and the individual design requirements of the site where it can be demonstrated that residential amenity and adequate light is not compromised.

I have considered these requirements and having regard to the site layout, together with the layout of the adjacent estate and the relevant conditions associated with the permission associated with it, I am satisfied that the proposed developments are acceptable in terms of the provision of private open space.

7.6. Appropriate Assessment:

The subject site is a greenfield site on the edge of the urban area of Waterville, and immediately adjacent to an existing residential estate. The site lies approximately 130m from the nearest Natura 2000 site, being the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365). It is the stated policy of Kerry County Council, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to conserve, manage and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County. In addition to the above, Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

The conservation objectives for the site seek to maintain or restore the favourable conservation status of habitats and species of community interests so as to contribute to the overall maintenance of favourable conservation status of those

habitats and species at national level. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation has been so designated on the basis that it supports the following habitats and / or species:

- [3110] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae)
- [3130] Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea
- [3260] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation
- [4010] Northern Atlantic wet heaths with Erica tetralix
- [4030] European dry heaths
- [4060] Alpine and Boreal heaths
- [5130] Juniperus communis formations on heaths or calcareous grasslands
- [6130] Calaminarian grasslands of the Violetalia calaminariae
- [6410] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae)
- [7130] Blanket bogs (* if active bog)
- [7150] Depressions on peat substrates of the Rhynchosporion
- [91A0] Old sessile oak woods with Ilex and Blechnum in the British Isles
- [91E0] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*
- [91J0] Taxus baccata woods of the British Isles*

* denotes a priority habitat

- [1024] Kerry Slug (*Geomalacus maculosus*)
- [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- [1065] Marsh Fritillary (*Euphydryas aurinia*)
- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1106] Salmon (*Salmo salar*)
- [1303] Lesser Horseshoe Bat (*Rhinolophus hipposideros*)
- [1355] Otter (*Lutra lutra*)
- [1421] Killarney Fern (*Trichomanes speciosum*)
- [1833] Slender Naiad (*Najas flexilis*)
- [5046] Killarney Shad (*Alosa fallax killarnensis*)

In terms of the proposed development, and having regard to its proximity to the SAC, the proposal must be screened for the purposes of Appropriate Assessment. In terms of the potential impacts, I would consider that the main areas of concern would relate to the potential for impacts on the water quality of Lough Currane as regards wastewaters that may be generated during the construction of the proposed development. The Board will note that the subject site does not appear to have any priority habitat present and that all waste waters arising from the proposed development will be discharged to the public systems, which have adequate capacity. The Planning Authority concluded that the proposal the development would be unlikely to have any significant impact on the Natura 2000 site.

Having considered the nature of the proposed development, together with the planning history of the site and given the scale of same together with the level of

information provided in support of the application, it is reasonable to conclude that 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 granted for the proposed development, for the reasons and considerations, and subject to the stated conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the current Kerry County Development Plan, 2015-2021, and the Caherciveen, Waterville & Sneem Functional Areas Local Area Plan, 2013-2019, the location of the subject site within the established development boundaries of Waterville and the existing established use of the lands immediately adjacent to the subject site, the pattern of existing and permitted development in the vicinity and having regard to the information submitted as part of the planning application together with the information submitted in the appeal, the Board is satisfied that the proposed development for the construction of two houses, generally accords with the policy requirements of the Development Plan and Local Area Plan. It is further considered that the design, scale and finish of the proposed works, would not seriously injure the visual or residential amenities of the area, would not represent a traffic hazard and would therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be

required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The houses shall be occupied as permanent, year round residences only and shall not be used as holiday homes or second homes.

Reason: In the interests of compliance with the policy objectives of the Local Area Plan and the proper planning and sustainable development of the area.

3. The external finishes, including roofs, shall match those of the existing residential development to the west.

Reason: In the interests of visual amenity.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Finished floor levels shall not be more than 300mm above the existing ground level, as measured from the existing lowest point. Full details shall be submitted for the written agreement of the Planning Authority prior to commencement of any development on site.

Reason: In the interest of visual amenity.

6. The sites shall be landscaped and planted in accordance with a comprehensive scheme to comprise predominantly native species and varieties and to include proposals for boundary and plot dividing hedges consisting of a variety of native plants. Details in this regard shall be submitted to and agreed with the planning authority prior to commencement of development and the scheme shall be completed to the satisfaction of the planning authority within six months of the first occupation of the dwellings.

Reason: In the interest of visual amenity.

7. Public lighting and footpath shall be provided in accordance with a scheme, which shall be submitted to and agreed in writing with the planning authority before development commences.

Reason: In the interest of amenity and public safety.

8. All service cables associated with the proposed development (such as electrical, telecommunications, communal television, and street lighting cables) shall be located underground. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

9. Notwithstanding the provisions of the Planning and Development Regulations, 2001, the proposed dwellings shall not be used for Bed and Breakfast or for any other form of paying guest accommodation.

Reason: In the interest of residential amenity.

10. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place on the site without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

11. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

12. 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.

A. Considine

Planning Inspector
9th November 2016