



An
Bord
Pleanála

Inspector's Report PL08.247373.

Development	Dwelling house, effluent treatment system and polishing filter.
Location	Tomies West, Beaufort, Killarney, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/534.
Applicant(s)	Gareth Doyle and Laura Power.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third party versus decision.
Appellant	Michael Horgan.
Observer(s)	None.
Date of Site Inspection	3 January 2017.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Tomies West, Beaufort, County Kerry. The site is in a rural area approximately 10km to the west of Killarney town and approximately 600 metres from the shore of Lough Leane to the east. The site is accessed from a local road, which branches off from the County Road which forms part of the Ring of Kerry, a picturesque tourist route.
- 1.2. The general area can be described as a rural landscape. There is significant evidence of pressure for one-off housing developments in the area. In the vicinity of the subject site, there are concentrations of one off housing along the local road network, particularly to the east and west of the site. The appeal site is overgrown with rushes, bracken and grass with small groupings of semi-mature trees. Half of the site is considered to be the extended side garden of the existing dwelling; the remainder comprises a rectangular portion of the agricultural field to the south west with no defined boundaries. There are three dwellings located along the road to the immediate north west of the appeal site.
- 1.3. The site itself has a stated area of 0.256ha and is triangular in shape and takes in a portion of the agricultural field to the south west. Timber post and sheep wire fencing bisects the site diagonally and forms the boundary to the agricultural field. The boundary of the garden to the north is not defined, however, a shallow field drain runs diagonally between sites. The roadside boundary comprises a high hedge of holly and birch trees and the site is generally flat with a slight slope upwards from the road. A dry ditch runs along the road between hedge and paved surface.

2.0 Proposed Development

- 2.1. The applicant proposes to construct a detached two storey gable pitched roof dwelling of up to 8.5 metres in height (stated floor area 212.44 sq.m.), with plaster finish and stone facing/metal cladding details.
- 2.2. Install a mechanical treatment unit, intermittent filter and polishing filter, connection to mains water supply.

- 2.3. Unsolicited further information (received by the planning authority 18 July 2016) and further information (received by the planning authority 17 August 2016) do not alter the proposal described above.
- 2.4. I note the inclusion of a domestic garage on layout drawings submitted with the Site Characterisation Assessment.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission, subject to 16 conditions, relevant conditions are summarised as follows:

- Condition 7. The dwelling shall be first occupied by the applicant for a period of at least seven years, submission of a section 47 agreement under the Planning and Development Act 2000 (as amended).
- Condition 8. The use of the dwelling shall be as a primary permanent all year round residence, it shall not be used as a holiday home.
- Conditions 14, 15 and 16. Technical requirements and obligations with regard to the proposed wastewater treatment system.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planners report can be summarised as follows:

- Further information with respect to the appropriateness of the site for wastewater treatment.
- An AA Screening assessment was carried out, no significant impact to the conservation status of any SAC or SPA was concluded.
- The site is located in an area zoned as Rural Secondary Special Amenity, the proposed house will not be visually obtrusive.
- The site is located in an area categorised as a Stronger Rural Area, however, the applicant has demonstrated a genuine housing need.

The final Planner's report recommends a grant of permission based upon the acceptability of the further information submitted.

3.2.2. **Other Technical Reports**

Site Assessment Unit – Environment Section. An initial report required additional information with regard to assessment of any seasonal variation in groundwater. A subsequent report accepted the further information as adequate and conditions were recommended.

3.3. **Prescribed Bodies**

An Taisce. Concerns that the site is too damp for an on-site treatment system and that traffic generated by the proposal would conflict with a proposed new road and car park to Tomies Wood.

3.4. **Third Party Observations**

Michael Horgan of Lakes and Rivers of Kerry - Salmon and Trout Conservation and Protection Association made a submission on the proposed development. The issues raised are broadly the same as those raised in the grounds of appeal, however, concern with regard to the covering of an open drain is omitted from the grounds of appeal.

Deputy Michael Healy-Rae observed that the proposal is for a family home and wished acknowledgment of his representations on their behalf.

4.0 **Planning History**

Appeal site

Planning authority register reference 15/786, construct a dwelling house and garage, application withdrawn.

Southern Portion of Appeal site

Planning authority register reference 14/134, An Bord Pleanála ref PL08.244505, grant permission to construct a public (western) access road to Killarney National Park and construct car park.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

Rural Types Map 3.1 -

Secondary Special Amenity Area Map 12.1n

It is difficult to determine if the site is located in a Stronger Rural Area or Rural Areas under strong urban influence. Nonetheless, the site is located in an Amenity Area and according to the County Development Plan policies relating to the Amenity areas take precedence.

Section 3.3 Rural Settlement Strategy

RS-1 Ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG) and the Development Guidance document of this Plan.

RS-2 Require the design of rural housing to have regard to the "Building a House in Rural Kerry; Design Guidelines" (KCC, 2009).

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.

RS-5 Ensure that future housing in all rural area complies with the EPA's 2009 Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e < 10).

RS-6 Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition, such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

Section 3.3.1.1 Identifying Rural Area Types,

Area 1 Rural Areas under Strong Urban Influence.

These are areas which exhibit characteristics such as proximity to the immediate environs or close commuting catchment of the Hub Towns and larger towns, rapidly

rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area and pressures on infrastructure such as the local road network.

RS-7 Ensure that favourable consideration is given to individual one – off house developments for immediate family members (sons, daughters or favoured niece/nephew) on family farms and land holdings; subject to compliance with normal planning criteria and environmental protection considerations.

RS-8 Give priority to the completion of unfinished dwellings and the occupation of vacant units in preference to new residential development for persons who are an intrinsic part of the rural community in which they are proposed, subject to compliance with normal planning criteria and environmental protection considerations.

RS-9 Facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages.

3.3.2 Development in Amenity Areas

Where there is an overlap between the Rural Area types and the Amenity Areas the policies relating to the Amenity areas shall take precedence.

Table 3.7 Amenity Zoning Settlement Policy

Sons and Daughters of the traditional landowner, or a favoured niece or nephew, the land having been in the ownership of the family for in excess of 10 years while being the location of the principal family residence.

or

The applicant shall demonstrate a genuine rural employment need.

or

The applicant's family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality.

Section 3.3.2.2: Secondary Special Amenity of the Development Plan states that these areas constitute sensitive landscapes which can accommodate a limited level of development and that the level of development will depend on the degree to which it can be integrated into the landscape. Residential development in these areas shall be regulated in accordance with the provisions of Section 3.3.1 and Table 3.7, the Plan states that the following provisions shall apply:

- Individual residential home units shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character of the landscape or natural environment.
- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is therefore on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.
- Any proposal will be subject to the Development Management requirements set out in this Plan in relation to design, site size, drainage etc.

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.

5.2. **Natural Heritage Designations**

The appeal site is located 350 metres from both the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (site code 004038). The upper reaches of the Castlemaine Harbour SAC are located 550 metres to the north west (Site code 000343).

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been lodged against Kerry County Council's notification of decision to grant permission. The main grounds of appeal can be summarised as follows:

- Concern that condition 8 of the planning permission which requires the house to be occupied as a principal residence and not a holiday home will not be adhered to.
- Condition 13 which refers to landscaping, the appellant is not confident that this condition will be enforced by the planning authority, as evidenced by other examples in the area.
- Condition 16 relates to the maintenance of wastewater treatment systems; the appellant is concerned about the meaning of the word perpetuity.
- The increase in traffic which will result from the proposed car park and access road to Tomies Wood could conflict with this permission.
- The appellant doubts if the access arrangements to the proposed dwelling are adequate in terms of sight distance.
- The carbon footprint generated by the location of the house, in terms of commuting to work is not acceptable.
- Believes that the proposed development is not in accordance with the proper planning and sustainable development of the area.

The appellant provides examples and reference numbers of rural house planning applications refused permission, newspaper cuttings, an extract from a Board Inspector's report and photographs to exemplify and support the grounds of appeal.

6.2. Applicant Response

The applicant's response can be summarised as follows:

- The applicant reaffirms their intention to comply with condition 8 and reside in the house permanently. The condition will not be modified and the house will not be used as a holiday home.
- The site is level and well screened from the road by a mature hedge line. In addition, in accordance with condition 13, groups of trees will be planted and the proposed entrance will minimise the amount of hedging that will have to be removed. The examples provided by the appellant are quite different in terms of siting and location.
- The reasons for refusal in other examples cited by the appellant are not comparable to the applicant. This is the only site available to the applicant.
- The applicant is already using the public road, so referring to other planning permissions is irrelevant.
- The site is located in an area defined as Secondary Special Amenity, the applicant has met the requirements of the zoning.
- The applicant confirms that they had discussions with Council engineering staff to confirm the requirements for a safe access point.
- The applicant works as a nurse in the local hospital, it is hoped that her work will outweigh the impacts of a carbon footprint.
- The applicant is not applying to amend an occupancy condition.
- The argument in relation to additional development at this location are irrelevant, as the site is too small to accommodate further houses.
- The drawings submitted with the application clearly detail how adequate sight lines can be achieved.
- The applicant encloses a letter which details the family circumstances, the need to care for her father, her local ties to the area, her employment as a nurse and a wish to build a house and remain in the locality.

6.3. Planning Authority Response

None.

6.4. **Observations**

None.

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 Board should be aware that the appellant has raised a number of broad issues which relate to rural housing and therefore I have addressed these issues under a single heading – Rural Settlement Policy. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Settlement Policy.
- Access and Traffic.
- Wastewater Treatment.
- Appropriate Assessment.

7.2. **Rural Settlement Policy**

7.2.1. The appellant has raised concerns that the proposed dwelling will not be the principal residence of the applicant; that the proposed development is not in accordance with the proper planning and sustainable development of the area; that the proposed development will result in a greater carbon footprint due to unsustainable commuting patterns and that landscaping conditions will not be adhered to.

7.2.2. I take these grounds of appeal together under the heading rural settlement policy because the Development Plan sets out policies and objectives with respect to landscape, siting, design and rural housing need. At the outset it should be noted that compliance with and enforcement of conditions of a planning permission are a matter for the planning authority and not the Board.

7.2.3. Given the resolution of the maps available in relation to the Kerry County Development Plan, I have found it difficult to determine with absolute certainty if the site is located in a Stronger Rural Area or Rural Areas under Strong Urban Influence.

The characteristics of the site and its proximity to Killarney town, suggest to me that the site is a Rural Area under Strong Urban Influence. The site is also located in an Amenity Area and according to the County Development Plan where there is an overlap between the Rural Area types and the Amenity Areas the policies relating to the Amenity Areas shall take precedence. In this instance the appeal site is located in a Secondary Special Amenity Area (Map 12.1n). Applications for houses in such areas should accord with Table 3.7 Amenity Zoning Settlement Policy.

- 7.2.4. **Housing Need** - As set out in the appeal file the applicant is a daughter of the landowner, who owns a portion of the site, and lives in the parent's dwelling. A large proportion of the site is in the ownership of a third party. I also note that the additional portion of land is required to accommodate the wastewater treatment system. Nonetheless, the family have been long-time residents of the area and the applicant has strong links with the local community and works in Killarney. In answer to the grounds of appeal the proposed dwelling is to be their permanent place of residence. The applicant wishes to reside beside their parents and provide care and support for them in their old age.
- 7.2.5. On the basis of the available information, I am satisfied that the applicant has demonstrated links to the area and satisfies the relevant eligibility criteria set out in Table 3.7: 'Amenity Zoning Settlement Policy' of the Development Plan as regards the development of a rural dwelling house in an area of 'Secondary Special Amenity'. The Board should note that the amenity zoning policy seems to undermine the slightly more stringent requirements which the applicant should demonstrate in order to qualify for local housing need in an area subjected to strong urban influence. Irrespective of the somewhat conflicting approach to the protection of rural landscape and rural housing policy in the County Development Plan, the applicant would more than likely qualify for consideration of rural housing at this location under either policy.
- 7.2.6. **Siting and Design** - The proposal will be the fourth dwelling in a row of detached dwellings. The landscape plan proposes a new hedge to the south and west boundaries and retains the existing mature roadside hedge. No trees within the site are proposed to be retained, vegetation will be cleared from a neighbouring site and no stands of trees are planned. The scale of the house is two storey with an overall height of 8.5 metres with a mixture of building finishes. In terms of height this would

be out of character with the existing dwellings to the north which are single storey as viewed from the roadside, though I do note that the dwelling to the immediate north has a two storey element to the rear. The prevalent house design in the immediate area is single storey houses some with attic accommodation. There are a small number of two storey houses in the wider area. I have no objection to the proposed house design itself, though the combination of building finishes is somewhat uncharacteristic of the area and not in accordance with the materials and colour guidance provided in the 'Building a House in Rural Kerry Design Guidelines' issued by the Council.

7.2.7. The proposed dwelling will be the fourth in a row of one off houses and would consequently increase the impact of housing at this location. In terms of compliance with Development Plan objectives with regards to building in a Secondary Amenity Area, the proposal would seem to meet some of the requirements of being designed sympathetically to the receiving landscape despite its overall height and design. I would anticipate that the proposed dwelling at this particular location would not, when taken in isolation, impact upon the rural landscape amenity. However, the incremental erosion of the pastoral landscape in the area is a factor worth consideration. It is this incremental increase and enlargement of a ribbon of one-off housing that has the potential to degrade the landscape for which the Council has sought to protect by designating it a Secondary Special Amenity Area. The Development Plan states that the landscapes and scenery are not just of amenity value but constitute an enormous economic asset. The protection of this landscape asset is therefore of primary importance in developing the potential of the County. It is in this context that I consider the proposed dwelling not to be in accordance with a stated objective of the Council and contrary to Policy ZL-1 which seeks to protect the amenity value of the County's landscape.

7.2.8. **Carbon Footprint and Sustainability** - The Development Plan is silent with respect to carbon footprint and rural dwellings. The Core Strategy of the Development Plan does, however, speak about the landscape of the County assisting in reducing greenhouse gas emissions and improved integration between land use planning and transport. Specific policies in relation to rural housing are written in the context of the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in 2005. The

County Development Plan is therefore written against the background of sustainable development and the proper planning of the area and applies a pragmatic approach to rural housing and the wider environment. The applicant complies with the requirements for consideration of rural housing and therefore the proposed development is considered sustainable.

7.3. Access and Traffic

- 7.3.1. The appellant has raised concerns with regard to the sightlines available to cars leaving the proposed site. In addition, concern is raised in relation to the volume of traffic which will be generated by the proposed amenity car park planned for Tomies Wood and how this might impact upon the appeal site.
- 7.3.2. The public road in the vicinity of the site is extremely narrow and characterised by sharp bends and steep inclines. It is not possible for two cars to pass each other, other than in laybys created by the entrances to dwellings. The site is located at the apex of a sharp bend and the applicant proposes to clear vegetation in order to obtain adequate sightlines.
- 7.3.3. In terms of the sight lines in a southerly direction, they are restricted to a certain degree by the mature hedgerow running along the roadside boundary of the site. Sightlines to the north are poor and rely on the removal of vegetation from lands currently in the ownership of the applicant's parents. I accept that traffic speeds may be quite low given the configuration and alignment of the road. I also note that the applicant currently uses the entrance driveway to the existing house which provides acceptable levels of sight line visibility.
- 7.3.4. However, I am concerned that traffic volumes most likely increase in the summer months as tourists avail of this route to the lake shore and access to Tomies Wood in the Killarney National Park. In addition, I am conscious of a recent planning permission granted to the National Parks and Wildlife Service (NPWS) for a realigned public road and 30 space carpark for visitors to Tomies Wood. I would advise the Board that this permission (An Bord Pleanála reference PL08.244505) relies on lands which are the subject of this application. I anticipate that traffic volumes would only increase in the event that the carpark is constructed. Regardless of the implementation of this permission or not, the existing seasonal increase in

tourist traffic presents inevitable traffic conflicts. Such an increase in traffic volumes on a substandard country road would militate against safe access to and egress from the proposed dwelling. I consider that to allow for further vehicular movements onto this substandard country road would give rise to a traffic hazard. I therefore recommend refusal in this regard.

7.4. Wastewater Treatment

- 7.4.1. The appellant raises a concern about the terminology used by the planning authority in relation to the upkeep and maintenance of the wastewater treatment system. As noted in section 7.2.2., compliance with and the enforcement of conditions are a matter for the planning authority. However, I am concerned at the lack of regard the applicant had in their site assessment for existing and permitted development in the vicinity. Specifically, I refer to a permission granted to the NPWS for a realigned public road and 30 space carpark for visitors to the National Park. A portion of the appeal site is located within the site boundary of works associated with the new public access road, realigned sod and stone ditch and flood relief culvert. The proposed wastewater treatment system is shown on plans as being located on lands required to implement the permission.
- 7.4.2. As per the Site Characterisation Form a T-value (standard method) of c.27.33 was recorded, however an initially a high water table was found and subsequently recorded at a lower level after a retest during August. As a consequence, an effluent treatment system with polishing filter is proposed. The site is located on a regionally important Aquifer. I note that Council officials accepted the site was suitable for a wastewater treatment system with polishing filter. I am concerned that no proper account was taken of permitted development in the vicinity, specifically the improvement of a public road for which a portion of the site is required and on which the proposed wastewater system is located.
- 7.4.3. I note that the proposed wastewater treatment system and polishing filter are located entirely on lands which are not in the ownership of the applicant or the applicant's family. These lands are owned by a third party for which consent to make the planning application has been given. I have not seen this letter of consent, though it

is referred to planning application documentation. The validity of the planning application is not under scrutiny for the purposes of this appeal.

- 7.4.4. I would have reservations as to the ability of the proposed wastewater system to work effectively if the road realignment were carried out. In this respect I maintain that a more complete site characteristic assessment should have taken account of permitted development, particularly in the case of the realignment of a public roadway. I do not think that this is reason enough to refuse permission, however, I am of the view that an alternate location for the system and subsequent retesting should be undertaken by the applicant.

7.5. Appropriate Assessment

- 7.5.1. The appeal site is located 350 metres from both the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (site code 004038). Castlemaine Harbour SAC is located 550 metres to the north west (Site code 000343). The Council's planning report included an Appropriate Assessment Screening Report. The report concludes that significant effects on Natura 2000 sites are not considered likely. I note the content and conclusions of the Habitat Directive Screening Report.
- 7.5.2. The relevant qualifying interests associated with the Killarney National Park SAC in the general area of the appeal site are Oligotrophic to Mesotrophic Standing Waters, Old Oak Woodlands and species associated with Lough Leane. In the case of Castlemaine Harbour SAC, the qualifying interests at the upper reaches River Laune are stands of Alluvial Forest. The Killarney National Park SPA is located 350 metres to the east of the appeal site. The qualifying interests for the SPA are Merlin and Greenland White-fronted Goose. The broad conservation objectives for both SAC and SPA are to maintain the favourable conservation condition of these interests.
- 7.5.3. Having considered the available information, in my opinion, given the scale of the development proposed, the nature of the receiving environment, the site location outside of the identified European sites, the downstream separation distances involved, and subject to the proposed wastewater treatment system which includes a polishing filter complying with the requirements of the EPA Code of Practice, the proposed development would not be likely to have a significant effect on either SAC

or SPA sites and would not undermine or conflict with the Conservation Objectives applicable for each site. No appropriate assessment issues arise and I consider that the proposed development would not be likely to have a significant effect individually or in combination with other plans or project on a European site.

8.0 Recommendation

8.1. In view of the above it is recommended that permission should be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.
2. The proposed development site is located within an area designated as a Rural Secondary Special Amenity area in the Kerry County Development Plan 2015-2021, which sets out a number of provisions to protect such landscape areas from development. These sensitive landscapes can only accommodate a limited level of development and this is dependent on the degree to which the development can be integrated into the landscape. The proposed development, when taken in conjunction with existing dwellings in the area, would constitute an excessive density of development by virtue of its impact on the landscape and would interfere with the character of the surrounding rural landscape, which it is necessary to preserve, and would, therefore, be contrary to objective ZL-1 of the Development Plan, which seeks to protect the amenity value of the landscape of the county. The proposed development

would, therefore, be contrary to the proper planning and sustainable development of the area.

Stephen Rhys Thomas
Planning Inspector

9 January 2017