



An
Bord
Pleanála

Inspector's Report PL08.247813.

Development

The installation of a community mechanical aeration system which includes the increase of ground level by 2.0m above existing ground level, and a perimeter security fence around the aforementioned system to provide for and service 67 no. proposed dwelling houses and services as previously granted under Planning Permission ref No. 08/227.

Location

Ballynamaunagh, Kilcummin,
Killarney, Co. Kerry.

Planning Authority

Kerry County Council.

Planning Authority Reg. Ref.

16/1005.

Applicant(s)

Tom & Anne McDonnell.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party

Appellant(s)

Tom & Anne McDonnell.

Observer(s)

D. Duggan.

Inspector

A. Considine.

Site Inspection

09/03/2017

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Ballynamaunagh which lies approximately 700m to the south west of Kilcummin Village, County Kerry. Kilcummin Village is located approximately 6 kilometres to the north east of the town of Killarney and has a number of local amenities including a post office, national school, community centre, nursing home and GAA club, with an attractive public space in the village.
- 1.2. There are two housing estates located outside the village itself, Radharc na Sleibhte to the north and Pairc Chuimin to the south west and there are a number of one off detached houses on the roads in the vicinity. Radharc na Sleibhte is connected to the village by a footpath and Pairc Chuimin is not. The current subject site is located to the south west of Pairc Chuimin.
- 1.3. The appeal site, while permission has been granted for the construction of 67 houses, remains a greenfield site. On the date of my inspection, the site was very wet and heavy underfoot with significant rush cover in the northern area of the site. The site is located off the Kilcummin to Killarney road and there is some tree / hedgerows along the road boundary.
- 1.4. The River Deenagh is located in close proximity to the subject site, to the east and this river is a feeder to Lough Leane. The Killarney National Park, McGillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) lies approximately 200m to the east of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the installation of a community mechanical aeration system which includes the increase of ground level by 2.0m above existing ground level, and a perimeter security fence around the aforementioned system to provide for and service 67 no. proposed dwelling houses and services as previously granted under Planning Permission ref. No. 08/227, all at Ballynamaunagh, Kilcummin, Killarney, Co. Kerry.

3.0 Planning Authority Decision

3.1. Decision

Kerry County Council decided to refuse planning permission for the proposed development for the following reason:

The Planning Authority is not satisfied on the basis of the particulars received with the application that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health. Accordingly, the proposed development would be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Officer considered the proposed development in terms of the information presented in support of the planning application, together with the planning history associated with the subject site, the Development Plan requirements, internal submissions and third party objections. The report acknowledges the live planning permission on the site for the construction of 68 houses under pp ref 08/277 and notes that no development has commenced on the site. The permitted development is to connect to the public wastewater collection and treatment scheme for Kilcummin, but this is not in place and there are no plans published regarding same. The report notes that the proposed development is to serve the permitted houses. The report notes the assessment by Kerry County Council's Site Assessment Unit which recommends refusal. The Planning Officer recommends that permission be refused.

3.2.2. Other Technical Reports

- County Archaeologist: Notes that there are no recorded monuments in the immediate area. However, given the scale of the development, pre-development archaeological testing should be carried out across the site.

- **SEE Environment:** The report notes that there is a high water table, approx.. 0.3m bgl, and that percolation tests could not be carried out on the site. The report considers that the fundamentals of the site are problematic and that there is a distinct risk of effluent ponding on site should the development proceed. Concern also raised regarding the scale of the system and the proximity to the Deenagh River, a feeder catchment to Lough Leane. It is acknowledged that the proposed development is a temporary measure but that proposals for the public scheme has not yet commenced construction. The subject site does not satisfy the basic site assessment requirements and therefore the applicant should be refused.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

There is one third party objection to the proposed development submitted from Dennis Duggan. The objection is summarised as follows:

- **Improper planning:** there appears to be bias against single dwelling house applications versus larger estate applications
- **Urbanising a rural area:** the development is out of character with the rural nature of Kilcummin village. There are inadequate services to deal with the population increase and is contrary to the Kerry County Development Plan.
- **No suitable zoning** for the proposed development and the site lies outside the Kilcummin Local Area development boundary.
- **Lack of suitable footpath** for pedestrians in an area where the 80km/p/h applies. The road is too narrow to provide a footpath.
- **The system proposed** does not appear to be suitably sized and arranged to deal with the number of dwellings proposed.
- **The site is generally unsuitable** for development and will require significant overlay and bog removal to facilitate the development.

- Lack of suitable road to and from Killarney as the road has had very little maintenance and is in a bad condition.
- Previous decisions of Kerry County Council, 16/247, where permission was refused to another developer for the construction of 33 houses where it was considered that ‘the proposed development would be premature pending the provision of a public sewerage system to serve the village of Kilcummin.’
- Disturbance to existing residents during construction.

4.0 Planning History

4.1. Current Site

PA ref 08/277: Permission granted for the construction of 68 houses including 13 no. detached houses, 44 semi-detached houses, 2 terraces of 3 no. houses each and 1 terrace of 5 no. houses including all access roads, services etc. This housing estate was to connect to the proposed public sewerage system and condition 24 of the grant of permission stated that ‘No dwelling units shall be occupied until such time as the proposed Kilcummin Sewerage Scheme is completed, and without prior agreement of the Planning Authority.’ Reason: In the interest of orderly development.

PA ref 08/9277: Permission granted on the 31st of May, 2013 to extend the validity of permission 08/277 for 5 years to 8th July, 2018.

4.2. Adjacent Site

ABP ref PL08.246784 (PA ref. 16/191): Permission granted to convert an existing building constructed as a crèche to two semi-detached dwellings at Pairc Chuimin, Kilcummin, Co Kerry.

ABP ref PL08.246790 (PA ref 16/234): Permission granted to retain foundations and complete six semi-detached dwellings and construct a detached dwelling at Pairc Chuimin, Kilcummin, Co Kerry.

ABP ref PL08.247637 (PA ref 16/744): Permission refused by Kerry County Council for the construction of 6 houses. ABP yet to determine the case.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

- 5.1.1. The appeal site is located outside the Settlement Boundary outlined for Kilcummin Village on Map 12.1k of the County Development Plan Maps. Kilcummin is identified as a District Town in the Settlement Strategy for County Kerry and has priority status for sewerage infrastructure. Kilcummin Sewerage Scheme is identified in Table 7.2 Priority Water & Waste Infrastructure Projects.
- 5.1.2. The site is located in an area of Co. Kerry which is zoned Rural General in the County Development Plan which states ‘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.’
- 5.1.3. The following objectives are therefore relevant:
- 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-3:** Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within existing cluster developments.
 - 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.

5.2. Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019

- 5.2.1. The overall vision for Kilcummin is to ensure that it develops sustainably as an attractive location for residents and that future development preserves the village's character and reinforces it where necessary.
- 5.2.2. 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.

5.3. Natural Heritage Designations

The settlement of Kilcummin is located upstream of the Castlemaine Harbour Natura 2000 site. The site itself is located approximately 200m to the west of the Killarney National Park, McGillicuddy's Reeks and Caragh River Catchment SAC (Site Code 000365).

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 proposed development. The grounds of appeal are summarised as follows:

- The appeal presents a background to the permitted development on the site and submits that the implementation of the public sewerage scheme is outside the applicants control.

- The applicant is entitled to construct the dwellings, but must substantially complete the development within the expiration of the planning permission. As the zoning of the lands have changed since the permission, it is not possible to re-apply for the housing estate.
- It is possible that the sewerage scheme will be in place upon completion of the housing estate which would render the on site WWTP superfluous.
- The proposal is a temporary solution and once the main sewer line is provided, the system will be decommissioned. This could be a condition of permission.
- While it is accepted that site conditions are not ideal, the proposal provided improvement works including increasing ground level by 2m and the system is designed to include UV treatment. The proposal complies with the Building Regulations (TDG) Part H and the EPA Code of Practice (Waste Water Treatment Systems serving Single Dwellings).
- It is submitted that there is a shortage of affordable housing stock in the Killarney / Kilcummin area and the site would provide needed accommodation.
- There is a possibility that the system will never be constructed on the assumption that the mains sewerage scheme is implemented by Irish Water in 2017/2018.

6.2. Planning Authority Response

The Planning Authority has not responded to this appeal.

6.3. Observations

There are two observations noted in relation to this first party appeal as follows:

- Mr. Denis Duggan:
Mr. Duggans observation raises similar issues to those raised to the Planning Authority during their assessment of the proposed development and which are summarised above at section 3.4 of this report. It is requested that the appeal be refused .

- Inland Fisheries Ireland:

IFI made an observation to the appeal noting the location of the site within the Deenagh River Catchment, the Deenagh River being one of the main salmon spawning and nursery tributaries within the Lough Leane Catchment in Co. Kerry. The aquatic environment therefore, requires protection from both water quality and habitat interference to ensure maintenance of the fishery, its biodiversity and amenity.

The observation notes that for over a decade, it has been considered that unsuitable soil conditions and the extent of discharge to ground / surface waters from septic tanks and commercial sewerage treatment systems within the catchment has contributed to placing river water quality at risk, which has instigated proposals for the introduction of a Sewerage Scheme for Kilcummin.

The site is located in a wet boggy site with limited natural percolation and extensive surface runoff. The site is also bound on two sides by water courses, a road drain to the north east and a substantial stream to the north which drains an extensive area.

Inland Fisheries Ireland considers that the introduction of a development of this nature will introduce an unacceptable risk of pollution to the watercourse bounding the site, to the Deenagh River and to groundwaters. It is further considered that a grant of permission will set a precedent for similar type developments and the IFI concurs with the refusal of planning permission.

6.4. Further Responses

None.

7.0 Assessment

Having regard to the nature of the proposed development and the details submitted with the planning application and appeal documents, I conclude that issues arising for consideration should be addressed under the following headings:

1. The principle of the development & the compliance with the County Development Plan & Planning History

2. Site Suitability
3. Appropriate Assessment

7.1. The principle of the development & the compliance with the County Development Plan & Planning History.

- 7.1.1. The subject site is located outside the established built up area of Ballynamaunagh, Kilcummin, Killarney, Co. Kerry, and is located to the south of the town. While the site has planning permission for the construction of a housing estate, due to expire on the 8th of July, 2018, condition 18(d) of that planning permission requires that the proposed development shall be connected to the public sewer at the applicants expense in accordance with the plans and sections received on the 11/02/2008 to the satisfaction of the Water Services Section of Kerry County Council. The Public Sewerage Scheme in Kilcummin has not been forthcoming, hence the current proposal to install a proprietary waste water treatment system to service the development until such time as the public scheme is in place. The Board will note that in the interim, the development plan for this area has changed and the subject site is no longer zoned for residential development.
- 7.1.2. The appeal site is located outside 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. While I note the comments of the first party in relation to conversations with Irish Water regarding the provision of the WWTP, I note that the planning application for the proposed waste water treatment system has not yet been lodged with Kerry County Council. The Board will note that Irish Water acknowledges that Kilcummin is located in an area of great natural beauty, close to the River Deenagh which flows into Lough Leane and forms part of the Killarney National Park. It is further noted that the application to facilitate a range of work including the construction of a new pumping station, a below ground peak flow holding tank and an access road to the pumping station from the back of the Páirc Chuimín estate. The application will also relate to the construction of a gravity sewer crossing of the River Deenagh within Killarney National Park. A Natura Impact Statement (NIS) to facilitate an assessment of potential impacts on the

Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation will be included in the planning submission.

- 7.1.3. As there is no current application with Kerry County Council for the proposed WWTP, and having regard to the current Rural General zoning afforded to the site, it may be considered that the proposed installation of a WWTP to service the permitted housing development might be considered reasonable and acceptable in principle. However, the Board will also note the requirements of objective RS-5 of the County Development Plan which seeks to 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* ($p.e < 10$).
- 7.1.4. The suitability of the site needs to be considered, notwithstanding the submission of the first party that the proposed WWTP will be used only as an interim measure. Of particular note is the fact that the settlement of Kilcummin is located upstream of the Castlemaine Harbour Natura 2000 site. The site itself is located approximately 200m to the west of the Killarney National Park, McGillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365). In terms of site suitability, the Board will note no reference to the designated site in the applicants application, and no AA has been carried out.

7.2. Site Suitability

- 7.2.1. The proposed development for consideration by the Board is for the provision of a Community Waste Water Treatment System to serve a housing estate with a PE of 350. The site assessment submitted in support of the proposed development notes the presence of a high water table, at 0.5m blg. The assessment clearly notes that no T or P results were achievable on the site and while the site assessment indicates the suitability of the site for a packaged waste water treatment system and polishing filter, clearly the site is inherently unsuitable for the proposed development. The assessment identifies that the vulnerable receptor as ground water and no real reference to the surface water bodies in the vicinity of the site is noted. I estimate that the proposed WWTP will be located between 10 and 20m from the watercourses referenced above in this report.

7.2.2. The SEE of the Environment Section of Kerry County Council considered the proposed development to be problematic and raises concerns in terms of the distinct risk of effluent ponding on the site. This concern is compounded by the size of the plant proposed and the PE to be serviced. Notwithstanding the proposal of the applicant to fill the site by approximately 2m with suitable soils for percolation purposes, I would conclude that the site is not suitable for the disposal of treated septic waste. I also note that the site assessment fails to provide any details in terms of hydraulic loading or discharge rates. Having regard to the above, I consider that the application, notwithstanding the intended temporary nature of the plants operation, has not demonstrated that the effluent arising from the housing scheme for which the plant is intended to serve, can be treated and disposed of within the site without risk to ground and surface water pollution. The development therefore, would be prejudicial to public health.

7.3. **Appropriate Assessment**

7.3.1. The subject site is located approximately 300metres to the west of the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (site code 000365), and is bound by two water courses, a drain to the north west along the public road and a stream to the north which feed the Deenagh River, a salmon spawning and nursery tributary within the Lough Leane Catchment, and which are qualifying interests of the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (site code 000365). In this regard, the Board will note that it is the policy of the planning authority, 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. Furthermore, 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 First Party has not presented any AA report in support of the proposed development.

7.3.2. Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (site code 000365), has been designated as being of special conservation interest on the basis that it supports the following habitats and / or species:

Habitats:

- [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

Species:

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

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The Conservation Objective for the site is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or the Annex II species for which the SAC has been selected.

- 7.3.3. On the basis that the proposed development site has the potential to impact a designated Natura 2000 site, in an area where certain protected habitats are evident, the proposed development must be screened for the purposes of Appropriate Assessment pursuant to the requirements of Article 6 of the Habitats Directive. Notwithstanding the fact that planning permission exists for the development of a housing estate on the overall site, the matter before the Board relates to the installation of a waste water treatment plant to serve the permitted housing estate as works on the planned Kilcummin Sewerage Scheme have not commenced. There is no effort to address issues in relation to AA by the first party. The Board will note that the Planning Authority undertook AA screening and I refer to the report of the

Planning Officer. The screening exercise included in the Planner's Report concluded that the proposed development would be unlikely to have any significant impact on the Natura 2000 site.

- 7.3.4. In terms of the submission of Inland Fisheries Ireland, the Board will note that the conclusion of this submission is the opposite, and the IFI raises concerns that a grant of planning permission would introduce an unacceptable risk of pollution to the watercourses bounding the site, to the Deenagh River and to groundwaters.
- 7.3.5. Having considered all of the available information, I would have serious reservations as regards the likely impacts arising from the proposed works required to accommodate a Waste Water Treatment Plant of the scale proposed, as well as the potential impacts associated with the operation of the plant having regard to the proximity of water courses with direct connections to the Deenagh River. I have further concerns in terms of the proposed development works and in particular the lack of any real detail pertaining to same together with the lack of any information is presented to mitigate the impact of the operation of the plant.
- 7.3.6. In light of the above, I consider that in the absence of clear and relevant environmental information, it is not possible to conduct a comprehensive appropriate assessment of the effects of the development proposed, being the construction of a community mechanical aeration system, in such proximity to watercourses affecting a European Site. In this regard, I am not satisfied that it can be established that the proposed development would not have a significant adverse effect on the integrity of the protected habitats associated with the Killarney National Park, Magillycuddy's Reeks and Caragh River Catchment SAC (site code 000365), in light of the conservation objectives afforded to the site.

8.0 Recommendation

- 8.1. It is recommended that planning permission for the retention and development as proposed be **Refused** for the following reasons and considerations.

9.0 Reasons and Considerations

1. On the basis of the information submitted with the application and appeal, the Board is not satisfied that the subject site is suitable for the safe disposal of foul effluent arising from the permitted housing scheme for which the treatment plant is intended to serve. Accordingly, it is considered that the proposed development would be prejudicial to public health, would give rise to a serious risk of water pollution and would be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the planning application and the appeal, and in the absence of a Natura Impact Statement or Environmental Statement, the Board is not satisfied that the proposed development, individually and in combination with other plans or projects, would not be likely to have an adverse effect on the integrity of the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (site code 000365), in light of the site's conservation objectives.

A. Considine
Planning Inspector
05/04/2017