



An  
Bord  
Pleanála

## Inspector's Report PL08.248007

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<b>Development</b>	Permission to construct a dwelling with connections to mains services and all associated site works.
<b>Location</b>	Gortamillen, Kenmare, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	16/1138
<b>Applicant(s)</b>	Matthew Merrick
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party - Multiple
<b>Appellant(s)</b>	Denis & Gail O'Sullivan Bernadette Goldrick
<b>Observer(s)</b>	M. Foley JV O'Callaghan
<b>Date of Site Inspection</b>	27 <sup>th</sup> April, 2017
<b>Inspector</b>	A. Considine

## 1.0 Site Location and Description

- 1.1. The subject site is located to the rear of a number of houses which front onto the N70, also known as the Sneem Road, approximately 1.5 km to the north-west of the centre of Kenmare, and within the development boundaries of the town. The area to the north west of the site is built up with the Heather Park housing estate while access to the site is over a small narrow cul-de-sac road which extends approximately 45 metres from the N70 to the site. This access road also serves two pairs of semi-detached houses. To the south, front, of the site, there is a beautiful old house known as 'Druid Cottage', which is a traditional two storey house and is used as a Bed and Breakfast. This property has been extended in the past almost up to the party boundary with the subject appeal site. Adjacent to Druid Cottage is a more modern storey and a half house. To the north and east of the site there is a field. Across the N70, there is a further residential estate, Ard Mullen with a holiday home village to the west. The area is located within the 60kmph speed limit in a serviced area of Kenmare.
- 1.2. The appeal site has an irregular configuration and is stated to be 0.048 hectares, and is generally flat and level across the majority of the site with an embankment comprising the northern boundary. There are a number of sheds on the site which are in a state of dereliction. The site boundaries comprise a high – approx. 1.8m high – block wall along the western boundary, the eastern boundary comprises a post and wire fence with the southern boundary a mix of timber fence with trees. The northern boundary area includes a mound with post and rail fencing on top. The site is quite restricted and confined.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling house with connections to public services on the site. The proposed house is laid out in an L shape and provides for a large kitchen / diner, utility, living room, master bedroom and WC at ground floor level with two further ensuite bedrooms at first floor level. The house will have a stated floor area of 137.5m<sup>2</sup>.

2.2. The proposed house will rise to two floors over the northern section of the house, rising to a ridge height of approximately 7.1m. The front of the house faces south and the single storey element of the house provides for the living room. The finished floor level of the proposed house is indicated at +98.28 metres and a ridge height of +105.37 elevation. The external finish of the house is not indicated but the drawings would suggest a smooth plaster finish.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to twelve conditions, standard in the main and including Condition 4, which relates to finishes.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. Planning Reports

The Planning Officers report considered the proposed development in terms of the planning history of the site, local area plan policies and objectives, expert reports and third party submissions. The report also presented an AA screening report and concluded that the proposed development is acceptable. The report recommends that permission be granted, subject to conditions.

##### 3.2.2. Other Technical Reports

There are no internal reports noted from other departments of Kerry County Council.

#### 3.3. **Prescribed Bodies**

Irish Water noted that mains water and sewer connections are available, at the developers cost.

The TII submitted a report citing national policy in terms of access onto national roads. The report concludes that it expects the Council to abide by official policy provisions.

### 3.4. Third Party Observations

There are four third party objections noted from the following parties:

- Gortrooska Management Co., c/o Gail O'Sullivan
- Denis & Gail O'Sullivan
- Bernadette McGoldrick
- John & Mary Foley

The objections are summarised as follows:

- Planning notice not clearly displayed
- ROW currently under the control of the Gortrooska Owners Management Co. Ltd and is maintained by them.
- Nuisance during construction phase and construction traffic using the ROW
- The ROW is inadequate to accommodate the construction traffic or the development.
- Public Liability Insurance will be required
- The site is a natural habitat for wildlife in the Kenmare area
- The development will block light into existing homes
- The site is confined and if constructed, the development will infringe on the adjoining property as a high density development on a small green area.
- The house would not be inkeeping with other houses in the area and would result in overdevelopment.
- The site is the only green belt area separating 19<sup>th</sup> Century building from already high density development to the north and west.
- The house may be another unoccupied holiday home in Kenmare and will cause disturbance to B&B business. The development will deter from home and livelihood.
- Road and general safety issues raised in terms of access onto the N70

- The site was once the rear garden of Druids Cottage and a grant of permission would set a dangerous precedent for substandard development in rear gardens of houses.
- The development would be visually obtrusive and would overlook adjacent properties.
- The development will infringe property rights and no permission is given to use the area to the front of the 4 Millfield houses as a lay-by and / or turning point.

## 4.0 Planning History

- 4.1. **Reg. Ref. 2055/08** – Permission refused by planning authority in 2008 for a single-storey dwelling of 119 square metres at this location to Mr. Matthew Merrick on the basis that the proposed development would be substandard in terms of design, layout and provision of quality private open space and would constitute over-development of this confined site by reason of excessive site coverage.
- 4.2. **Reg. Ref. 175/09** – Permission refused by planning authority in 2009 for a two-storey house of 175 square metres at this location to Mr. Matthew Merrick for a similar reason to above refusal.
- 4.3. **ABP ref PL08.234817 (PA ref 09/878)** – Permission was granted by planning authority in 2009 for a house with connections to mains services and associated site works to Mr. Matthew Merrick. Permission was granted subject to ten standard conditions. The decision was upheld on appeal

## 5.0 Policy Context

### 5.1. Development Plan

The site is located within the zoned area of Kenmare and the Kenmare Functional Area Local Area Plan, 2010 – 2016, as extended. The site is zoned residential in this LAP and section 3.6.1 of the LAP deals with Existing Residential Developments, while Section 3.6.2 deals with Future Residential Developments.

## 5.2. Natural Heritage Designations

None affecting the site directly. The Kenmare River SAC is located approximately 1km to the south of the subject site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a multiple third party appeal as follows:

- Gail & Denis O'Sullivan submitted a third party appeal against the decision of Kerry County Council to grant permission for the development as proposed. The grounds of appeal are similar to those issues raised in the course of the PAs assessment of the development and are summarised as follows:
  - Planning notice not clearly displayed
  - Site access too narrow for emergency services, to allow two cars to pass and is inadequate to accommodate construction traffic.
  - Concerns raised regarding potential damage to the ROW and entrance to site
  - Property in the area is rented as holiday homes in the summer and the development would impact on the amenity of holiday makers.
  - The development will block light into home
  - The development will destroy one of the few natural habitats for wildlife in Kenmare.
- Ms. Bernadette Goldrick submitted a third party appeal against the decision of Kerry County Council to grant permission for the development as proposed. The grounds of appeal are similar to those issues raised in the course of the PAs assessment of the development and are summarised as follows:
  - Primary concern relates to the potential impact of the development on the marketing of her B&B business, and will impact on the character and setting of one of the few original stone dwellings left on the Ring of Kerry.

## 6.2. Applicant Response

The Applicant has not responded to this multiple third party appeal.

## 6.3. Planning Authority Response

The Planning Authority has not responded to this multiple third party appeal.

## 6.4. Observations

There are two observers to the appeal noted as follows:

- Mr. JV O'Callaghan raises concerns similar to those as discussed during the PAs assessment of the proposed development. The issues raised in this observation are also reflected in the grounds of appeal as summarised above. Additional issues raised relate to public liability insurance and impact of increased traffic onto the public road.
- Ms. Mary Foley also raises similar concerns as above. In addition, the following issues are raised:
  - Ownership of the site is not established.
  - Impact of the development on an embankment will impact the residential amenity of no. 29 Heather Park.

The submission concludes that the development will seriously injure the amenities of properties in the vicinity and would not be acceptable in terms of traffic safety, general safety, property rights and would be at variance with proper planning. It is requested that these issues be re-visited and reviewed in the context of all objections and observations lodged with the Board.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. Having considered all of the information submitted with the planning application, together with the appeal documentation and responses, and having undertaken a site visit, I consider it appropriate to assess the proposed development application under the following headings:

1. The principle of the development
2. Visual & Residential Amenity Issues
- 3: Roads & Traffic issues
- 4: Servicing issues
- 5: Appropriate Assessment
- 6: Other Issues

### 7.2. Principle of development

7.2.1. The subject site is located within the development boundary of the town of Kenmare. The site is zoned for residential purposes and lies to the rear of a number of houses fronting onto the N70, essentially in a backland location. The site itself, has a stated area of 0.048ha which given that the site can connect to public water services, is an adequate area to accommodate a house. Having regard to the location of the subject site, within a residential area, together with the zoning afforded to the site, I am satisfied that in principle, the proposed development is acceptable.

7.2.2 The subject site has had the benefit of planning permission for the construction of a house under planning reference, ABP ref PL08.234817 (PA ref 09/878). No development commenced on the site and the site remains undeveloped.

7.2.2. Chapter 13 of the Kerry County Development Plan 2015-2021 deals with Development Management – Standards & Guidelines, where section 13.3 deals with standards for residential developments in urban areas. These guidelines present standards in terms of boundaries, screening and landscaping, building lines and private open space, density, finishes and parking. In terms of private open space, the Plan requires that on green field sites outside of town centre areas dwellings shall be provided with not less than 48m<sup>2</sup> of private open space. The proposed development provides for multiples of this minimum area within the site. The guidelines also



require that there is a minimum of 22m between directly opposing first floor habitable rooms. Having regard to the submitted design and proposed site layout, I am satisfied that this requirement has been appropriately met. In addition, I am satisfied that adequate off-street parking can be accommodated.

### **7.3. Visual & Residential Amenity Issues**

- 7.3.1. In terms of the proposed design of the house, I have no objection in principle. The design reflects that of the permitted house on the site under ABP ref PL08.234817 (PA ref 09/878). I would concur with the Boards previous consideration of the overall design and layout which seeks to respect the character of other buildings in the vicinity and which has been designed, in my opinion, to minimise any potential disamenity arising to other residential properties surrounding the site. I also note the landscaping plans for the site which will further minimise any visual impacts associated with the proposed development on this serviced site.
- 7.3.2. In terms of potential impacts on adjacent residential properties, I am satisfied that the development will have no impact in terms of overlooking or overshadowing on those properties to the south. In terms of no. 29 Heathfield Park to the north west, the Board will note that the overall ridge height will be 1.64m lower than the existing house and there is a proposed +10m separation distance between the buildings. I am satisfied that this is acceptable.
- 7.3.3. I note the concerns of the third party appellants and observers in terms of the potential impact of the development during the construction phase. The Board will note that a number of these properties in the vicinity are advised as being occupied as short term tourist accommodation, and Druids Cottage is an established B&B. While I acknowledge the concerns of the appellants and observers, I am also satisfied that construction works are of a temporary nature and would not result in any significant long term impacts on the overall amenity of the area.

### **7.4. Roads & Traffic issues**

- 7.4.1. Access to the site is from the N70, over a short, narrow and straight road for a distance of approximately 45m. The road also provides access to 4 houses which front onto the N70. This road runs along the eastern boundary of no. 1 Millfield, and to the west of Druids Cottage. The road has an overall width of 6m with a footpath

located along the boundary of no. 1 Millfield. The carriageway is therefore approximately 4.5m in width along the length of no. 1 Millfield. I would consider that this is acceptable in terms of access for a single house and the Board will note that the road widens at its junction with the N70 to accommodate two-way traffic. I also note that there was no objection from Kerry County Council in this regard and indeed, the Board itself considered this layout acceptable previously. I am satisfied therefore, that the development is acceptable and if permitted would not constitute a traffic hazard in this urban area.

7.4.2. I note the concerns of the third party appellants and observers in terms of the use of the Right of Way access to the site. I am satisfied that this is a civil issue and not a matter for the Board. I also note the concerns regarding the potential impact of the development during the construction phase.

#### 7.5. **Servicing issues**

There are no servicing issues arising in relation to the proposed development. All water services are available.

#### 7.6. **Appropriate Assessment**

7.6.1. The subject site is surrounded by development and is considered to be a greenfield site. The site lies approximately 1km to the north of the nearest Natura 2000 site, being the Kenmare River SAC, Site Code 002158. The Kenmare River is so designated for the following qualifying interests:

- 1014 Marsh Snail *Vertigo angustior*
- 1160 Large shallow inlets and bays
- 1170 Reefs
- 1220 Perennial vegetation of stony banks
- 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts
- 1303 Lesser Horseshoe Bat *Rhinolophus hipposideros*
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- 1355 Otter *Lutra lutra*

- 1365 Harbour seal *Phoca vitulina*
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
- 2120 Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- 2130 \*Fixed coastal dunes with herbaceous vegetation (grey dunes)
- 4030 European dry heaths
- 6130 Calaminarian grasslands of the *Violetalia calaminariae*
- 8330 Submerged or partially submerged sea caves

\* indicates a priority habitat under the Habitats Directive

This SAC overlaps with Iveragh Peninsula SPA (004154), Beara Peninsula SPA (004155) and Deenish Island and Scariff Island SPA (004175). It also adjoins Old Domestic Building, Dromore Wood SAC (000353), Cleanderry Wood SAC (001043), Cloonee and Inchiquin Loughs, Uragh Wood SAC (001342), Mucksna Wood SAC (001371), Glanmore Bog SAC (001879) and Drongawn Lough SAC (002187).

- 7.6.2. The Board will note that there is no hydrogeological connection from the site to the Kenmare River. The Board will note the concerns of the third parties in terms of the use of the subject site as a natural habitat for wildlife in the Kenmare area. Having regard, therefore, to the nature and relatively modest scale of the proposed development, together with the nature of the receiving environment and proximity to the nearest European site, 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.

## 7.7. Other Issues

- 7.7.1. Public notices:

The Board will note the photos attached to the Planning Authority's report on the proposed development. Having regard to the level of public participation in this application and appeal process, I am satisfied that the public notices were adequately positioned to advise the public of the proposed development.

### 7.7.2. Development Contributions:

Having regard to the location of the subject site on zoned lands, which are serviceable by public water services, development contributions apply in this instance.

## 8.0 Recommendation

8.1. I recommend that planning permission be granted of the proposed development for the following reasons and considerations and subject to the stated conditions.

## 9.0 Reasons and Considerations

Having regard to the residential zoning in the Kenmare Local Area Plan and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development 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 details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.  
**Reason:** In the interest of clarity.
2. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

3. Details of the foundations, finished floor and finished ground levels on site shall be agreed with the planning authority prior to commencement of development.

**Reason:** In the interest of residential amenity of adjoining property.

4. The road works associated with the proposed development including access, paving, surface finishes and parking area shall be carried out and completed in accordance with the requirements of the planning authority.

**Reason:** In the interest of traffic safety.

5. Prior to commencement of development, details of the materials colours and textures of all the external finishes of the proposed house shall be submitted to the planning authority for agreement.

**Reason:** In the interest of visual amenity.

- 6(a) The site shall be landscaped in accordance with a scheme of landscaping (including timescale), details of which shall be submitted to the planning authority for agreement before development commences.
- (b) Details of measures for the protection of trees to be retained shall be agreed in writing with the planning authority and shall be implemented prior to commencement of development.
- (c) Details of boundary treatment and screen walling shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

7. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. 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.

8. Development described in Class 1 or Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 shall not be carried out without a prior grant of planning permission.

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

9. The proposed house shall be used as a single dwelling unit only.

**Reason:** To prevent unauthorised development.

10. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

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A. Considine  
Planning Inspector

02<sup>nd</sup> May, 2017