



An  
Bord  
Pleanála

## Inspector's Report

### PL08.248358

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<b>Development</b>	House, wastewater treatment system, percolation area and all associated site works.
<b>Location</b>	Gortagullane, Muckross, Killarney Co Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	16/1041
<b>Applicant(s)</b>	Sean & Geraldine Pierce
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Michael Horgan
<b>Observer(s)</b>	An Taisce Frank & Siobhan Lewis
<b>Date of Site Inspection</b>	22/06/2017.
<b>Inspector</b>	A. Considine

## 1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.578ha, is located in the townland of Gortagullane, Muckross approximately 5km to the south east of the town of Killarney and approximately 2km to the east of Muckross House, in Co. Kerry. The site is accessed off the local road network that runs to the east of the N71, the national primary road which runs between Killarney and Kenmare. Access to the site is via a right of way which is currently unpaved and overgrown, and running between two existing houses.
- 1.2. While the site is located in a rural area, there is evidence of significant pressure for one-off housing developments in the area. The narrow cul-de-sac road which accesses the subject site currently services 11 houses, and the applicants' family landholding in this area. Houses are generally single storey in the vicinity of the subject site and the house to the south of the right of way is accessed via a separate road.
- 1.3. The subject site is currently under grass and comprises part of a larger field. The existing site boundaries comprise existing hedgerows, mature leylandii trees along the western boundary and a low retaining wall along the eastern boundary with the adjacent house. It is proposed to erect a new timber post and rail fence with native planting along the proposed northern boundary of the site. The site slopes down in an east to west direction with levels indicated at approximately +105m to the east reducing to approximately +90m in the west.
- 1.4. The application notes the presence of Japanese Knotweed infestation in a portion of the site. An eradication programme commenced in the autumn of 2015 and repeated treatments will be ongoing for the next 12 months.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling with septic tank treatment system and associated site works at Gortagullane, Muckross, Killarney Co Kerry.
- 2.2. The proposed house will rise to a height of 9.5m at its highest, but is broken into three blocks. The house proposes two levels which have been designed to address the topography of the subject site and will have a stated floor area of 361.5m<sup>2</sup>.

Accommodation is provided over two floors with the upper ground floor providing two double bedrooms, one ensuite, a living room, kitchen / dining, utility and den. The main access to the building is located at this level. The lower ground level comprises two further double ensuite bedrooms and a reading area.

- 2.3. The external finishes will include a painted plaster finish with vertical timber cladding proposed along part of the south eastern elevation. The design provides for a flat roofed which will have a green moss finish. Windows will be powder coated 'alum'.
- 2.4. The house will be serviced by a connection to the public water mains and the installation of a septic tank system and percolation area.
- 2.5. The planning application included the following documents:
  - Relevant plans and particulars
  - Site Characterisation Form
  - Letter from applicants
  - Letter from landowner
- 2.5.1. An Archaeological Statement on Proposed House was submitted by way of unsolicited further information on the 7<sup>th</sup> November, 2016.
- 2.5.2. Following a request for further information, the applicant submitted a Report on Archaeological Test Trenches as well as a landscaping plan.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to grant permission, subject to 16 conditions, for the development.

Condition 7:           Occupancy condition

Conditions 14-15:   Relate to the waste water treatment system.

Condition 16:        Relates to Japanese Knotweed eradication requirements.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The Planners report provided an EIA screening report as well as an AA report. The report accepts that the applicant complies with the settlement location requirements of the Plan and given the proposed design and the intention to use the sites contours, is satisfied that the house will have minimal impact in the landscape and will integrate into the landscape. All site suitability issues have been addressed and are considered acceptable. Following receipt of the response to the FI request, the Planning report recommended that permission be granted subject to conditions.

### 3.2.2. Other Technical Reports

**Co. Archaeologist:** (2 reports submitted) The subject site is partially located within the zone of potential / notification around the recorded monument, Ke075 001 listed in the RMP as a ringfort / cashel and hut sites. An archaeological impact assessment including pre-development archaeological testing was submitted. No impacts on the monument are envisaged and no further mitigation is required.

**Biodiversity Officer:** The report notes the proximity, within 100m, to the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment (incl. Flesk River) SAC, and Killarney National Park SPA (Site Code 004038). Considering the scale and location of the site outside designate habitats, no significant effects on the cSAC are considered likely from the works. The report also notes that that the land is not key habitat for the species of conservation interest for which the SPA is designated. It is recommended that best practices in the management of waste water at construction and operational stage should be undertaken.

**Environment Section:** A Site Assessment was undertaken by the Site Assessment Unit. The report concludes that the site is suitable for the incorporation of an on-site effluent treatment system, subject to conditions.

## 3.3. Prescribed Bodies

**Irish Water** No objection, subject to Conditions

**An Taisce:** The proposed development would be located in a highly scenic area in an elevated location overlooking Lough Leane. There are already a large number of houses along the cul-de-sac roads leading to the site, all connected to individual septic tanks or other waste water treatment systems. Further development would increase the likelihood of ground water pollution and give rise to a further risk of traffic accidents when cars enter or exit the narrow public road.

### 3.4. **Third Party Observations**

Mr. Michael Hogan, Lakes & Rivers of Kerry, Salmon and Trout Conservation & Protection Association, submitted an observation in relation to the proposed development. It is considered that the locality is totally overdeveloped with houses and septic tanks and is now unsustainable on the environment, in terms of traffic etc. Concern over the carbon footprint of all the traffic during the construction. A cutting from the Indo Paper, dated 28-09-16 regarding air pollution is included.

## 4.0 **Planning History**

### 4.1. Application site

**PA ref 01/3163:** Permission sought by Ms. Marian Culloty, to erect a dwelling house with septic tank and percolation area. Further information sought but not responded to.

**PA ref 93/1367:** Outline planning permission sought by Mr. John Holmes, for the construction of a bungalow on the subject site. Permission was granted on 28<sup>th</sup> day of November, 1994, subject to 11 conditions. The Board will note that the access to the site is via the currently proposed access.

### 4.2. Adjacent sites to the North

**PA ref 16/273:** Permission sought by Mr. Tom Benson to retain (I) Attic conversion works including rooflights, (II) construction of a lean-to-shed and (III) construction of a dining room extension. Permission was granted subject to conditions.

**PA ref 15/350:** Outline permission sought by WK O'Connor & Sons LTD, for the construction of five dwelling houses to include access road and site development

works. Permission was refused by the Planning Authority based on non-compliance with settlement policy and no appeal was made.

#### 4.3. Adjacent sites to the South

**PA ref 07/4567:** Permission sought by Mr. Robert F. Harman, to retain house as constructed. Permission was granted subject to conditions.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Kerry County Development Plan, 2015-2021 is the relevant policy document pertaining to the subject site. It is the policy of the Kerry County Council to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (DoEHLG) and this will be achieved through greater emphasis on the following:-

- Establishing that there is a genuine housing need for permanent occupation.
- Giving priority to the reduction of residential vacancy rates in the Rural Areas under Strong Urban Influence and Stronger Rural Areas in preference to new residential development.
- The replacement, renovation or modification of existing structures in rural areas for residential use.
- Encouraging people who wish to reside in the countryside to live in existing settlements or development nodes where there are services available.

5.1.2. Section 3.3.1.1 of the plan seeks to Identifying Rural Area Types. The planning authority has submitted that the subject site is located within an area identified as a Stronger Rural Area. I consider it reasonable to present the policy requirements for Area 1: Rural Areas Under Strong Urban Influence given the proximity to Killarney and the extent of ribbon and one off housing developments evident in the vicinity.

- 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.

It is an objective of the Council to:-

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

#### 5.1.3. Section 3.3.2: Development in Amenity Areas:

The site is located within an Area of Secondary Special Amenity which constitutes a sensitive landscapes which can accommodate a limited level of development. Table 3.7 of the Plan details the Amenity Zoning Settlement Policy for Areas of Secondary Special Amenity and advises as follows:

- 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 applicants family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality.

5.1.4. Chapter 10 deals with Natural Environment & Flood Risk Management.

5.1.5. Chapter 12 deals with Zoning & Landscape.

Chapter 13 deals with Development Management - Standards & Guidelines and Section 13.4: Standards for Residential Development in Rural and Non-Serviced Sites.

## 5.2. **Natural Heritage Designations**

None affecting the site directly. The Board will note however that the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment (incl. Flesk River) SAC, and Killarney National Park SPA (Site Code 004038) is located within 100m of the subject site .

## 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 development of a house on the subject site. The grounds of appeal can be summarised as follows:

- The house would be in a highly scenic area in an elevated location overlooking Lough Leane
- There are a large number of houses sited along the cul-de-sac, all connected to individual septic tanks or other WWTPs. Further development would increase the likelihood of ground water pollution.
- The development would give rise to further traffic on the narrow road.
- Concern raised regarding the policing of conditions, referencing the following in particular:
  - Condition 7: occupancy condition.
  - Condition 8: use of the house as a primary residence and not a holiday home.
  - Condition 13: landscaping. Photos of houses where similar conditions attached but not complied with.
- Enclosures include newspaper cuttings from the Irish Independent 18/03/2016. the Kerryman 20/04/2011 and the Irish Times 05/08/2014, and it is requested that the Board take the issues raised on board. The issues relate to mis-information and overdevelopment of one off housing.
- Observations in relation to An Taisces role in planning process.



## 6.2. Planning Authority Response

The planning authority has responded to this third party appeal. The response is summarised as follows:

- The planning authority considered the scenic nature of the area and notes that the proposed house will be located within a cluster of one-off houses. Given the nature of the landscape and the amount of mature trees, the houses within this cluster are not visible from the public road and do not impact on the visual amenities of the area. It is considered that the proposed development integrates into the surrounding area.
- In terms of enforcement of conditions, the planning authority acts on all reported issues.
- The applicant is proposing to build close to his family home and meets the criteria set out in the Rural Settlement Policy as set out in the Kerry County Development Plan, 2015-2021.

## 6.3. First Party Response

6.3.1. The First Party solicitor responded to this third party appeal. The response is summarised as follows:

- A letter from the applicants' solicitor notes satisfaction that the proposed entrance is not passing through the observers' property as suggested.
- The roadway in question is owned by four identified persons and a right of way has been obtained from all these parties. The written consent of the observers is not required.

6.3.2. The First Party has responded to this third party appeal. The response is summarised as follows:

- The site was selected from an 8 acre family holding of 35years.
- It is acknowledged that there are a number of houses in the area, and the proposed site location enforces the clustered nature of housing.

- The selected site is inconspicuous and is not visible from the public road. The split level design works with the contours of the site.
- The proposed development will meet the current criteria for a new septic tank sewerage treatment system.
- In terms of compliance with conditions, the applicants confirm their intention to fully satisfy all conditions.

Included with the response is a letter from the applicants parents as well as a letter from the applicants.

#### 6.4. Observations

6.4.1. An Taisce made a submission in relation to the subject appeal. The submission is summarised as follows:

- The location of the site is highly scenic elevated and close to the Killarney National Park. Concerns raised regarding the potential for ecological impacts.
- Visual amenity issues as the site is within the Secondary Special Amenity in the Kerry County Development Plan.
- Given the density of houses in this rural location, there is a high danger of pollution.
- In terms of the settlement location policy, it is noted that the applicant is getting the site from his father. Names are different and should be checked to confirm eligibility.

6.4.2. Frank & Siobhan Lewis made an observation in relation to the subject appeal. The submission is summarised as follows:

- The subject development is located immediately to the west of the observers' property and have shown proposed plans to access their site through observers' lands.
- No permission has been given for this access.
- It is considered that their property will be devalued should permission be granted for the development.

## 6.5. Further Responses

There are no further responses noted.

## 7.0 Assessment

### 7.1. Introduction

Having considered all of the information submitted with the planning application and technical reports, 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:

- Principle of the proposed development and compliance with the Kerry County Development Plan, 2015-2021
- Design, Setting & Visual Impact
- Other Issues
- Appropriate Assessment

### 7.2. Principle of the proposed development & Compliance with the Kerry County Development Plan, 2015-2021:

- 7.2.1. The subject site is located within the townland of Gortagullane, Muckcross, Killarney Co Kerry. I would note that the Planning Authority considered the proposed development site as being located within a 'Stronger Rural Area' in its assessment of the proposed development. The first section of the planning report however identifies the area as 'Rural Area Under Strong Urban Pressure'. I have had regard to the maps associated with the Kerry County Development Plan, 2015-2021 and this, together with a site inspection and an assessment of other planning applications within the vicinity of the site, I suggest that the subject site is located within an area of County Kerry which is more akin to a Rural Area Under Strong Urban Pressure given the proximity of the subject site to Killarney, and indeed, the National Primary Road, the N71, as well as the level of one off housing in the immediate vicinity of the

subject site. The Board has in the past considered such determinations acceptable and appropriate.

- 7.2.2. The Plan, together with the Sustainable Rural Housing Guidelines, provide clear guidance that there is a presumption against the development of one off houses except where the proposal constitutes a genuine rural generated housing need based on social and / or economic links to the particular rural area. In terms of assessing the principle of the proposed development having regard to the applicable rural housing policy, it is necessary to consider whether or not the applicant satisfies the relevant eligibility criteria, with particular reference to Objective RS-7 which states the following:

‘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’.

- 7.2.3. The applicant is the only child of the landowners, Billy & Ann O’Connor, and it is submitted that the applicant is currently living in the family home with his wife and young son. The family home is a matter of 200 meters from the subject site. Following receipt of a response to a further information request, I accept that Mr. Pierce, applicant, resided in the area with his mother and stepfather for a number of years during school. It is advised that Mr. O’Connor (landowner and applicants stepfather) made Muckross his home in 1980, his family having acquired the land in the 1970s. Mr. Pierce (applicant) advises that he moved permanently to Muckross in 1996. I acknowledge and accept that the applicant is a local to the area, and that adequate proof of compliance with the current settlement location policy is evident on the file and I accept that the applicant adequately complies with the settlement policy for the area as presented in the Kerry County Development Plan 2015-2021.
- 7.2.4. The subject site is also located in an area which has been designated as being of ‘*Secondary Special Amenity*’ value, Map 12.1(o) of the County Development Plan refers. Such areas are considered to constitute sensitive landscapes which can only accommodate a limited level of development depending on the degree to which it can be integrated into the landscape. It is, in principle, the policy of the Planning Authority to permit rural housing throughout the county subject to the intended

occupancy of the house as a permanent place of residence and the inclusion of a 7 year occupancy clause. However, within 'Secondary Special Amenity Areas' the Board will note that the County Development Plan is more restrictive. In these amenity areas consideration will only be given to prospective applicants for rural housing where they can demonstrate eligibility with one of a number of criteria.

- 7.2.5. As advised above, I am satisfied that the applicant complies with the Development Plan requirements for the construction of a house within a rural area described as having a Secondary Special Amenity value on the basis that his family has owned the landholding since before January, 2003.
- 7.2.6. The Board will note the requirement to consider any proposed development in terms of compliance with normal planning criteria and environmental protection considerations. In principle, I am satisfied that in principle, the proposed development adequately complies with the Kerry County Development Plan requirements.

### **7.3. Design, Setting & Visual Impact**

- 7.3.1. The subject site is located within a Secondary Special Amenity area within the county and as such, Section 12.3.1 of the County Development Plan is considered relevant in that it deals with Zoning Designations: Rural Secondary Special Amenity. The Plan states that 'the landscape of areas in this designation is sensitive to development. Accordingly, development in these areas must be designed so as to minimise the effect on the landscape.' The Plan further states that 'permission will not be granted for development which cannot be integrated into its surroundings. Development will only be permitted where it is in accordance with the provisions of Chapter 3.3.2.
- 7.3.2. Section 3.3.2.2 of the CDP deals with Secondary Special Amenity Areas and advises that 'areas of Secondary Special Amenity constitute sensitive landscapes which can accommodate a limited level of development. 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 below.'

- 7.3.3. In terms of the current proposed development, and having undertaken a site visit, I am satisfied that the applicant has sought to design a building which would integrate into the sloping nature of the site and the landscape into which it will sit. While the prevailing house design in the wider area is single storey houses, some with attic accommodation provided in some, the Board will note the nature of the subject site has a significant slope and is not level. I have no objection to the proposed house design and consider that, given the existing boundaries together with the proposed landscaping plan for the site, the development would not represent a visual intrusion in this landscape.
- 7.3.4. Policy Objective ZL-1 of the County Development Plan seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives and Objective ZL-4 in the County Development Plan seeks to regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of this Plan.
- 7.3.5. In relation to the proposed house design, the Board will note that the file was initially incomplete in that there were no drawings provided for the north west or north east elevations. The Board requested these drawings from the Planning Authority on the 8<sup>th</sup> June, 2017 and was advised on the 15<sup>th</sup> June that no such drawings were received from the applicant with the application. The applicant was duly advised and the relevant plans were submitted.
- 7.3.6. In terms of the current proposed development, the Board will note that if permitted, the house will be located to the rear of existing houses within this cluster of houses. In essence it may be considered that the proposed development is an infill site and would, if permitted, integrate substantially into the landscape. As such, I consider that the development, would not militate against the protection of the rural area, of which it is the stated policy of the Planning Authority to protect, and would be not contrary to the proper planning and sustainable development of the area.

## 7.4. Other Issues

### 7.4.1. Roads & Traffic:

Access to the subject site is over the local road network and cul-de-sac small roads which are commonplace in this area of Kerry. The small single lane road currently provides access to approximately 11 existing houses. Given the lightly travelled nature of the road network, I am generally satisfied that if permitted, the proposed development will be acceptable from a traffic point of view.

### 7.4.2. Site Suitability:

In terms of the current proposed development, a site characterisation form was submitted with the application. The site, while close to a Natura 2000 site, does not show evidence of surface water ponding or land drains. Bracken and whitethorn is present throughout the site, with stones and rocks also present. The site characterisation form identified the subsoil type as being till derived chiefly from Devonian sandstone and where the regionally important aquifer was both moderately and extremely vulnerable. The bedrock type is described as Dinantian pure unbedded limestones. I note that the submitted form advises that the site is not within 250m of significant sites which is incorrect as the site is within 100m of the SAC. However, the water bodies associated with the SAC are located at a much greater distance and there are no obvious pathways between those and the subject site.

The site assessment recorded that the trial hole was dug to a depth of 3m which did not encounter water or evidence of mottling or bedrock. Tests carried out on the site recorded a \*T value of 12.64. The site assessor concludes that the site is suitable for a septic tank system with percolation area with a discharge to groundwater and trench invert level of 0.8m. The septic tank will have a capacity of 4m<sup>3</sup> and the percolation area will comprise 8 no. 18m long percolation trenches. The hydraulic loading rate is indicated at 25l/m<sup>2</sup>.d.

The overall issue of density of residential properties all on individual waste water treatment systems in the vicinity of the site, contributes to the wider concern in terms of the development of the area. However, there is no objection in principle to the proposed development in terms of site suitability and the Board will note that the Site

Assessment Unit of Kerry County Council raised no objections or concerns in relation to the proposed development.

#### 7.4.3. Archaeology:

The subject site is located partially within the zone of archaeological potential/notification, as defined in the Record of Monuments & Places and Sites & Monuments Record. The northern limit of the site is within the zone of monument KE075-001, which is a ringfort / cashel and hut site. In support of the proposed development, an Archaeological Statement was submitted by way of unsolicited further information and a report on Archaeological Test Trenches was submitted following a request for further information. This report concluded that the development will have no adverse effect on the known archaeological site which is to the north of and outside the development area. It is further concluded that there will be no visual impact on the enclosure as the enclosure and hut sites (KE075-001/02) are located above and to the north of the proposed development. The sites are currently covered with scrub vegetation. I consider this acceptable and no further mitigation is required.

#### 7.4.4. Japanese Knotweed:

The Board will note the presence of this invasive species on the site. The applicants have advised that the process to eliminate the species from the site has commenced and that there will be no development works in the vicinity of the site where the Japanese Knotweed is present.

### 7.5. **Appropriate Assessment**

- 7.5.1. The subject site is not located within any Natura 2000 site but is located approximately 100m from the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment Special Area of Conservation and pNHA (Site Code 000365) and the Killarney National Park SPA (Site Code 004038). It is the stated policy 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, the Plan provides, at Objective NE 12, that no projects which would 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. The site is not located within the existing boundaries of the Natura site.

7.5.2. The purposes of AA screening will determine whether appropriate assessment is necessary by examining:

- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- b) the potential effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives, and considering whether these effects will be significant.

7.5.3. AA Screening:

1. Description of the project and local site: This is an application to construct a dwelling house on a greenfield rural site.
2. Is the proposed development directly connected with or necessary to the nature conservation management of a Natura 2000 site: No.
3. Identification of relevant Natura 2000 sites, within 5km of the subject site:
  - Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment Special Area of Conservation and pNHA (Site Code 000365)
  - Killarney National Park SPA (Site Code 004038)
4. Key Natura 2000 sites with regard to the subject site and proposed development are as indicated above, both being within 100m of the subject site.
5. Existing expert reports, advice or guidance: Report from Biodiversity Officer of Kerry County Council advising no significant effects on the SAC are considered likely.

6. The potential for significant impacts on Natura 2000 sites, having regard to potential significance indicators and to qualifying interests and conservation objectives for the site. Where doubt exists, it should be assumed that effects could be significant. In terms of the relevant Natura 2000 site in this instance, the Conservation Objectives for Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment Special Area of Conservation and pNHA (Site Code 000365) states as follows:

Objective: 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:

<b>Code</b>	<b>Description</b>
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 <i>Erica tetralix</i>
4030	European dry heaths
4060	Alpine and Boreal heaths
5130	<i>Juniperus communis</i> formations on heaths or calcareous grasslands
6130	Calaminarian grasslands of the Violetalia calaminariae
6410	<i>Molinia</i> 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 <i>Ilex</i> and <i>Blechnum</i> 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

<b>Code</b>	<b>Common Name</b>	<b>Scientific Name</b>
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>

Potential significance indicators<sup>1</sup>:

Any impact on an Annex I habitat:

- Causing interference with, reduction, erosion or fragmentation of the Natura 2000 site: Not likely
- Causing direct or indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site: Not likely
- Causing serious or ongoing disturbance to species or habitats for which the Natura 2000 site is selected (e.g. increased noise, illumination and human activity): Not likely
- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site: Not likely
- Interfering with mitigation measures put in place for other plans or projects: Not likely.
- Causing the introduction or spread of exotic or invasive species: Not likely, although the Board will note the presence of Japanese Knotweed on the site. The applicants have advised that the process to eliminate the species from the site has begun.
- Causing a cumulative impact and other impacts: Possible.

7. Assessment of likely effects - direct, indirect and cumulative – undertaken on the basis of available information as a desk study or field survey or primary research as necessary: Having considered the above potential significance indicators, I consider that the development, if permitted, is likely to have little or no impact on the adjacent Natura 2000 site.

8. Screening Statement with conclusions: The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered not by certainty but by the possibility of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an appropriate assessment on the basis

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<sup>1</sup> Using the Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities, DoEHLG, 2009 I consider that the potential significant indicators should include as presented. There is no defined list of indicators, with each site potentially generating a different list.

that it is not certain that there are significant effects. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment Special Area of Conservation and pNHA (Site Code 000365) or the Killarney National Park SPA (Site Code 004038), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Recommendation

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

### **Reasons and Considerations**

Having regard to the provisions of the current Kerry County Development Plan, 2015 – 2021, the location of the site and the pattern of existing and permitted development in the vicinity, together with the information submitted as part of the planning application, and the appeal, the Board is satisfied that the proposed development is acceptable in terms of design and scale and would not adversely impact the residential amenities of existing adjacent properties, or the visual amenities of the area, and would be acceptable in terms of traffic safety, subject to compliance with appropriate conditions, and would therefore, be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and further information submitted to the planning authority on the 28<sup>th</sup> of February, 2017 and further information submitted to An Bord Pleanla on the 14<sup>th</sup> August, 2017 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. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.  
  
(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

**Reason:** In the interest of public health.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. No surface water shall be permitted to flow onto the public footpath or public road from the site.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

5. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with the details of the landscaping scheme submitted to the Planning Authority on the 28<sup>th</sup> day of February, 2017. The existing boundaries shall be retained in full and the landscaping plan shall be implemented in the first growing season following the occupation of the house.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. Prior to the commencement of any development on site, the developer shall engage a suitably qualified person to:
  - a) conduct a survey to determine, map and mark on the ground, any Japanese Knotweed on the site.
  - b) draw up and implement a control programme for the elimination of any Japanese Knotweed from the site. The control programme shall include treatment methodology, time scale, measures to prevent spread and disposal methods.
  - c) prepare a validation report confirming that the remediation has been effective and that the site is free of Japanese Knotweed.

All surveys and reports shall be submitted to the Planning Authority prior to the commencement of any development on site.

**Reason:** In the interests of proper planning and sustainable development.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential and general amenities of property in the vicinity.

8. All external finishes, including the roof finish, shall be submitted for the written agreement of the Planning Authority prior to the commencement of any development on the site.

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

9. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

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

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  
Inspectorate  
8th September, 2017