



An
Bord
Pleanála

Inspector's Updated Report PL08.248967.

Development	33 housing units, detached crèche, decommission wastewater treatment plant and construct foul sump and pumps.
Location	Pairc Chuimin, Kilcummin, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/247.
Applicant(s)	Barth O'Neill.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party versus decision.
Appellant(s)	Barth O'Neill.
Observer(s)	Denis Duggan. Irish Water.
Inspector	Stephen Rhys Thomas.

1.0 Preliminary

- 1.1. The original planning appeal file PL08.247054 refers, this was quashed by order of the High Court (case number 2017 64 JR). The remitted appeal was considered by the Board on the 1st November 2017. The Board decided that the file be referred back to the Inspector for an updated report and recommendation having regard to all submissions received or to be received.

2.0 Planning History

- 2.1. Subject site

The updated planning history of the subject site is as follows:

Planning register reference number 17/97 and An Bord Pleanála reference number PL08 .248355, permission granted (October 2017) a waste water pumping station and a gravity sewer.

3.0 Further Responses

- 3.1. All received further responses as they relate to the planning appeal referred to PL08.247054, are summarised below.
- 3.2. A response was received from the applicant regarding the observations of Mr Duggan, dated 10th October 2016. This was the submission that initiated the judicial review proceedings and which was not seen by the Planning Inspector prior to his recommendation or the Board prior to their making of the decision on PL08.247054. The following is a summary of the issues raised:

- Crèche, an alternate location for a smaller crèche has been selected within the area of the current planning application, 16/247. The revised location takes account of the permission to convert an existing crèche to two houses, 16/191 refers. In addition, the new location is away from passing traffic and allows access to public open space.
- Footpath, the applicant has included an extract of their appeal in relation to PA ref 16/234 and ABP ref PL08.246790, the appeal related to the completion of houses within the same estate. In their appeal submission it is stated that

the completion of the footpath is no longer the responsibility of the applicant. Monies have been paid over to the Local Authority in accordance with planning conditions and the completion of the footpath is contingent on a number of landowners.

- Public Sewer, the applicant states that progress has been made with regard to the delivery of foul water services. A number of meetings have been held between the applicant and a Council engineer. Email correspondence is included, regarding the appointment of consulting engineers to carry out surveys of the lands to support a planning application to be made by Irish Water. In addition, the correspondence outlines an intention to acquire lands from the applicant with a view to the construction of a sewage pumping station.
- The applicant concludes that permission should be granted, as plans for foul water services have been progressed. A condition should be attached to restrict the occupation of houses until the water services are commissioned.

The applicant has included a correspondence from Kerry County Council Senior Executive Engineer Colm Mangan, dated 5th February 2016, that concerns the status of the Kilcummin Sewerage Scheme and extracts from the Killarney Municipal District Meeting. The documents outline that funding is available and the project is being readied for tender 2016.

3.3. A further response has been received from **Mr Duggan**, dated 27th November 2017. Mr Duggan was an observer to the quashed appeal, ABP reference PL08.247054. The following is a summary of the issues raised:

- A new inspector and Board members should be selected to assess the appeal from the beginning.
- The Board should provide reasons why the observer was not forwarded correspondence from the applicant in the original appeal.
- The observer is concerned that they were not party to the High Court case regarding the original appeal. In addition, the observer fails understand why they were not furnished with all papers regarding the High Court case.

- The observer is concerned that their views will not have sufficient time for a full assessment, given the limited timeframes imposed by the Board.
- The observer reiterates concerns about the lack of footpath facilities and the impact upon health and safety as a result of an additional 33 houses. The observer is not currently in negotiations with the Council regarding footpath construction.
- The observer defends his right to make submissions on planning applications as necessary. In addition, the observer offers an opinion as to why other residents of Kilcummin may or may not make submissions on planning applications.
- There is disagreement that the current proposal is the same as previously permitted in 2004; disagreement too with the current condition of the estate and a Tidy Town's report submitted by the applicant.
- There is support for good planning, but not on the scale of the applicant's current proposal at Pairc Chuimin.
- Finally, concerns are raised in relation to the maintenance of the existing foul water management system and the designation of Kilcummin as a rural settlement.

In addition, a further response was received by An Bord Pleanála on the 8th January 2018, in which the observer amplifies earlier points already raised. Specifically, concern is highlighted in relation to the lack of footpath facilities to the village, environmental issues and that the current matter should be assessed by a different inspector.

3.4. A response was received from the applicant, dated 1st December 2017 regarding the observations of Mr Duggan. The following is a summary of the issues raised:

- The proposed crèche facility contained in the current proposal remains, as there is no existing crèche building available for use.
- The lack of footpath facilities is no longer a matter for current planning applications, as demonstrated by previous appeals.

- Since October 2017 permission has been granted for the Kilcummin Sewerage Scheme (PL08.248355) and timelines for its construction have been stated as 2019.
- If permission is granted a condition is suggested that limits construction work on the site until the Kilcummin Sewerage Scheme is commissioned.

In addition, a response was received by An Bord Pleánala on the 11th January 2018, in which the appellant is satisfied that all matters have been raised and no further comments are necessary.

3.5. A further response has been received from **Irish Water**, dated 6th February 2018, in which it is stated that design and investigative work is continuing with respect to the permitted wastewater pumping station and gravity sewer associated with the Kilcummin Sewerage Scheme. Construction is due to begin in 2019, subject to wayleave agreements and CPO procedures if necessary.

4.0 **Assessment**

4.1. In this, my updated report, I have confined myself to all new matters raised by the applicant and observers. The issue of Appropriate Assessment requires consideration. The key issues can be dealt with under the following headings:

- Kilcummin Sewerage Scheme.
- Crèche.
- Footpaths.
- Appropriate Assessment.

4.2. **Kilcummin Sewerage Scheme**

4.2.1. I note that permission has been granted by the Board for a waste water pumping station and a gravity sewer on the site, PL08 .248355 refers. Initial concerns around the timeframe and delivery of the sewerage scheme formed the basis for the previous decision of the Board, now quashed. Given the existence of an extant permission for infrastructure that will service the proposed development, I see no reason why permission cannot now be granted for the proposed development. Circumstances have changed in the intervening time period and subject to a

condition that restricts the commencement of development until the wastewater infrastructure is fully commissioned, the proposed development is acceptable.

4.3. Crèche

- 4.3.1. The applicant has indicated that the crèche that formed part of the original proposal submitted to the planning authority will now proceed. I note that permission had been granted for the conversion of a crèche facility to houses, according to the applicant, the works have now been completed (PL08.246784 refers). A crèche is no longer available for use in the estate. Therefore, it is reasonable to require the provision of a childcare facility as originally proposed on plot 118, as indicated on drawing PC2016/303 and associated plans and elevations received by An Bord Pleanála 15th August 2016.

4.4. Footpaths

- 4.4.1. An observer raises serious concerns with regard to the lack of footpath facilities between the housing estate and Kilcummin Village, in addition to general inadequacies in the wider road network. Whilst it is the case that Pairc Chuimin is not served by a pedestrian footpath link to the village, it is noted that the parent permission (planning register reference 04/1528) shows a footpath link (1.5 metres in width) as far as the Roman Catholic church to the north east. The current planning application required further information with regards to the provision of a footpath. The applicant responded by stating that the payment of a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 (as amended) on 04/1528 had been submitted to the Council. Public realm deficiencies such as a lack of footpaths are identified in the LAP for Kilcummin, and the delivery of same are dependent on individual landowners/developers in accordance with the technical standards of the Council. In this instance, a condition of a planning permission had been complied with by the developer and a payment was made, however, the footpath works did not commence. The delivery of a footpath in this instance is a matter for the Council.

4.5. Appropriate Assessment

- 4.5.1. With respect to the issue of Appropriate Assessment, in the first instance the Board should note my earlier comments. Secondly, and more relevant to the matter in

hand, the Board may wish to refer to the conclusion reached in relation to the Kilcummin Wastewater Scheme application, PL08.248355 refers.

4.5.2. However, in the interests of completeness, the appeal site is located approximately 65 metres from the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365). The overall site slopes downwards towards the Deenagh River, which forms part of the river catchment. The existing housing scheme is served by a wastewater treatment system with a sand polishing filter. The treatment system is located within the appeal site and will be decommissioned upon the delivery of a public sewerage system. Details have not been submitted with the planning application or the appeal with regard to the decommission methodology. However, it is anticipated that this matter would not necessitate in itself the requirement for a Stage 2 – Appropriate Assessment; as the outcome will be the removal of a potential impact to the SAC. In this context and having regard to the nature and scale of the development it is proposed to construct as part of an extension to an existing housing estate environment, specifically the proposal to decommission an existing wastewater treatment system and sand polishing filter and connect to a public sewerage system (upgrades permitted under ABP ref PL08.248355), 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.

5.0 Recommendation

I recommend that permission be granted, subject to conditions for the reasons and considerations as set out below.

6.0 Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2015-2021, the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019, to planning permission granted for the construction of a waste water pumping station and a gravity sewer, An Bord Pleánala reference PL08.248355 refers and to the nature and scale of the development proposed and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed

development would not seriously injure the amenities of the area or of property in the vicinity. The development it is proposed to change the use of would, therefore, be in accordance with the proper planning and sustainable development of the area.

7.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 17 day of June 2016 and by the further plans and particulars received by An Bord Pleanála on the 10 day of October, 2016 and the 1 day of December 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. Construction work on the site shall not commence until such time as the proposed Kilcummin Sewerage Scheme is completed and commissioned.

Reason: In the interests of orderly development.

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

Reason: In the interest of public health.

4. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

5. A concrete block wall of two metres in height, capped and plastered on both sides, shall be constructed along all side boundaries of the rear gardens.

Reason: In the interest of orderly development and residential amenity.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

7. Site development and building works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

8. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility [and to ensure the use of locally appropriate placenames for new residential areas].

9. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. The area required by Kilcummin Sewerage Scheme pumping station permitted under planning register reference number 17/97 and An Bord Pleanála reference number PL08 .248355 shall remain free from development.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

10. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

11. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the "Recommendations for Site Development Works for Housing Areas" issued by the Department of the Environment and Local Government in November 1998. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Stephen Rhys Thomas
Planning Inspector

23rd March 2018