



An
Bord
Pleanála

Inspector's Report PL08.249058

Development	Construct a single storey dwelling house with attic accommodation served by a wastewater treatment unit, discharging to a soil polishing filter also to include all associated site works.
Location	Ranaleen, Currow, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/485
Applicant(s)	Patsy Fleming & Olivia Martin
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	John Charles McSweeney
Observer(s)	None.
Date of Site Inspection	25 th October, 2017
Inspector	Robert Speer

1.0 Site Location and Description

The proposed development site is located in the rural townland of Ranaleen, Co. Kerry, approximately 6.2km east of Farranfore and 3.4km southeast of the village of Currow. The surrounding landscape is primarily one of undulating rural countryside with intermittent instances of one-off housing and agricultural outbuildings and in this regard it is notable that there is a concentration of such structures to the south / southwest of the subject site. The site itself has a stated site area of 0.32 hectares, is irregularly shaped, and presently forms part of a larger agricultural field. It is bounded by mature hedgerow to the northwest and southwest whilst the remaining site boundaries are not physically defined at present. To the immediate northwest the site adjoins a narrow local county roadway whilst the adjacent lands to the northeast, southeast and southwest are in agricultural use.

2.0 Proposed Development

The proposed development consists of the construction of a dormer-style dwelling house with a stated floor area of 226m² and a ridge height of 6.85m. The overall design of the proposed dwelling house is conventional and is based on an asymmetrical plan incorporating a two-storey front gable feature and a single storey side annex. No specific details of external finishes have been shown on the submitted drawings.

Access to the site will be obtained directly from the adjacent public road to the immediate northwest via a new entrance arrangement and in this respect it is proposed to set back part of the existing stone and sod ditch alongside the roadway in order to maximise the available sight distance. It is also proposed to install a wastewater treatment system which will discharge to a soil polishing filter and to connect to a local Group Water Scheme.

3.0 Planning Authority Decision

3.1. Decision

On 19th July, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 17 No. conditions. These conditions are generally of a standardised format and relate to issues including occupancy, external finishes, landscaping, entrance details, wastewater treatment and development contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

States that the proposed development site is located in a 'Stronger Rural Area' on lands which have been designated as 'Rural General' and that the overall design and layout of the proposal is generally in keeping with the surrounding pattern of development and will not detract from the residential amenities of neighbouring properties. It also notes that part of the roadside boundary will be removed in order to provide a safe vehicular access, that the adjacent roadway is narrow with a low ambient traffic speed, and that the Site Assessment Unit has no objection to the proposed wastewater treatment arrangements. The report proceeds to conclude that the applicants satisfy the rural settlement policy criteria set out in the Development Plan and recommends a grant of permission, subject to conditions.

3.2.2. Other Technical Reports:

Environment (Site Assessment Unit): No objection, subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

A single submission was received from the appellant, the contents of which are reiterated in the grounds of appeal.

A representation was also received from Deputy Danny Healy-Rae T.D. which has requested that favourable consideration be given to the subject application.

4.0 Planning History

On Site:

None.

On Adjacent Sites:

None.

On Sites in the Immediate Vicinity:

PA Ref. No. 982146. Was granted on 1st December, 1998 permitting Sean Flynn permission to erect two bedrooms to dwelling house at Ranaleen, Currow, Farranfore, Co. Kerry.

PA Ref. No. 043340. Was granted on 2nd December, 2004 permitting James Brendan O'Donoghue permission to construct an easy feed cattle shed complete with slatted tank for overwintering cattle at Ranaleen, Currow, Killarney, Co. Kerry.

PA Ref. No. 06226. Was granted on 24th April, 2006 permitting Jeremiah Buckley permission to construct an easy feed cattle shed with slatted tank and all associated ancillaries at Ranaleen, Currow, Killarney, Co. Kerry.

PA Ref. No. 07214. Was granted on 17th April, 2007 permitting James Brendan O'Donoghue permission to construct a silage base and all associated ancillaries at Ranaleen, Currow, Killarney, Co. Kerry.

PA Ref. No. 074476. Was granted on 8th August, 2008 permitting James Brendan O'Donoghue and Breda O'Connor permission to construct a single storey dwelling with Envirocare treatment unit and raised bed percolation, entrance, garage and all associated ancillaries at Ranaleen, Currow, Killarney, Co. Kerry.

PA Ref. No. 08907. Was granted on 30th June, 2008 permitting Jeremiah Buckley permission to retain easy feed cattle shed with slatted tank within revised site boundaries (original Planning Ref. No. 06/226) at Ranaleen, Currow, Killarney, Co. Kerry.

PA Ref. No. 09850. Was granted on 21st September, 2009 permitting Kathleen Flynn permission to construct a slatted house and a farmyard manure store and all associated ancillaries at Ranaleen, Currow, Killarney, Co. Kerry.

Other Relevant Files on the Landholding:

PA Ref. No. 062935 / ABP Ref. No. PL08.221203. Was refused on appeal on 16th July, 2007 refusing John Broderick permission to construct a private domestic dwelling, wastewater treatment unit, soil polishing filter and all with associated site works at Ranaleen, Currow, Co. Kerry, for the following reasons:

- The site of the proposed development is located in an area identified as an area under strong urban influence in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005. On the basis of submissions made in connection with the planning application and the appeal, the Board is not satisfied that the applicant meets the criteria for a house at this rural location. The proposed development would, therefore, militate against the preservation of the rural environment and lead to demands for the uneconomic provision of further public services and community facilities and would be contrary to the proper planning and sustainable development of the area.
- Having regard to the soil suitability tests carried out on the site and to the content of the submissions made in relation to the application and the appeal, it has not been demonstrated that the effluent arising from the proposed development can be adequately treated on site and that such effluent would not be prejudicial to public health or present an unacceptable risk of water pollution. Taken in conjunction with existing development in the vicinity the proposed development would lead to an over concentration of wastewater treatment systems. The proposed development would, therefore, be prejudicial to public health.

5.0 Policy Context

5.1. National and Regional Policy

The *'Sustainable Rural Housing, Guidelines for Planning Authorities'*, 2005 promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site would appear to be located in an *'Area under Strong Urban Influence'* as indicatively identified by the Guidelines. Furthermore, in accordance with the provisions of the Guidelines, the Kerry County Development Plan, 2015-2021 includes a detailed identification of the various rural area types relevant to the county at a local scale and 'Map 3.1' of the Plan would appear to indicate that the site is located at a transitional point between a *'Rural Area under Strong Urban Influence'* and a *'Stronger Rural Area'*.

5.2. Development Plan

Kerry County Development Plan, 2015-2021:-

Chapter 3: Settlement Strategy:

Section 3.2: *Housing:*

HS-2: Facilitate the housing needs of people in their local communities through actively providing / assisting the provision of housing in settlements and as single rural houses as identified in the Settlement Strategy.

Section 3.3: *Rural Settlement Strategy:*

Aim: To sustainably manage the development of rural parts of the County; support the creation of employment opportunities for those living and working in the rural area; sustain established rural communities and conserve the qualities of the rural environment.

It is the policy of the Council to:-

- Enhance the vitality and viability of rural towns and villages to strengthen their role as rural service centres and protect existing community uses and services in the villages.

- Maintain a stable population base in the rural areas with a strong network of villages and small towns.
- Protect sensitive landscapes and other environmentally sensitive areas from unsustainable development.

Section 3.3.1: Rural Area Types and Settlement:

There is a tradition of dispersed settlement patterns in the countryside, however it is apparent that the recent rate of housing construction and scale of dispersed rural housing is unsustainable and is uneconomical in terms of infrastructure provision and quality of life.

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:-

- a) Establishing that there is a genuine housing need for permanent occupation.
- b) 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.
- c) The replacement, renovation or modification of existing structures in rural areas for residential use.
- d) Encouraging people who wish to reside in the countryside to live in existing settlements or development nodes where there are services available.

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 areas complies with the EPA's 2009 Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e < 10).
- RS-6:* Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition, such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

Section 3.3.1.1: Identifying Rural Area Types:

Area 1: Rural Areas under Strong Urban Influence: 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.

Section 3.3.2: Development in Amenity Areas:

Section 3.3.2.1: Rural General:

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.

Table 3.7: Amenity Zoning Settlement Policy: Rural General:

The proposed dwelling shall be used as a permanent place of residence.

Chapter 10: Natural Environment & Flood Risk Management:

Section 10.3: *Water Quality*

Section 10.4: *Septic Tanks and Proprietary Waste Water Treatment Systems*

NE-26: Ensure that all waste water treatment systems for single houses are designed, constructed, installed and maintained in accordance with the manufacturers guidelines and the E.P.A. Publication 'Wastewater Treatment Manuals Treatment Systems for single houses' (2010) or any amending/replacement guidance or standards.

Chapter 12: Zoning & Landscape:

Landscape Protection:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Section 12.2.1: *Zoning Designations:*

Rural General:

Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.

ZL-4: 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.

Chapter 13 Development Management - Standards & Guidelines:

Section 13.4: *Standards for Residential Development in Rural and Non-Serviced Sites*

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

- The quality of water supply in a well that serves the appellant's neighbouring farmholding has deteriorated over the last 20 No. years and is no longer safe to drink or to use for washing (as evidenced by the results of the accompanying water quality analysis). In this regard the Board is advised that a number of new dwelling houses have been built in the area in the last 20 No. years and that due to the broken shale and porous nature of the underlying ground conditions it is considered that any new effluent treatment system will further impact on groundwater quality.
- The '*Sustainable Rural Housing, Guidelines for Planning Authorities*' aim to ensure that '*key assets in rural areas such as water quality and the natural and cultural heritage are protected to support quality of life and economic vitality*' whilst Policy RS1 of the Kerry County Development Plan requires all development proposals to comply with this guidance. However, it has not been demonstrated that the proposed development will adequately protect water quality in the area and, therefore, an extensive groundwater investigation should be undertaken in order to properly assess the impact of the submitted proposal on groundwater.
- Groundwater quality in the area should be required to improve before any further development is permitted.
- The proposed access arrangement onto a narrow roadway is likely to have an adverse impact on road safety.
- The applicants are not from the area and have not demonstrated a genuine need to reside at this location.
- Whilst Mr. Patsy Fleming (the co-applicant) is a nephew of the landowner, it should be noted that there may be a future requirement for the landowner to

provide sites for his own family. Furthermore, it is submitted that the landowner has previously disposed of sites from his landholding.

- The parents of Mr. Patsy Fleming have significant landholdings located c. 1-3km from the subject site and he has no particular need to reside at this location. Any need for housing may be more sustainably achieved if situated in or adjacent to Mr. Fleming's direct family holding.
- The subject proposal does not comply with the provisions of the '*Sustainable Rural Housing, Guidelines for Planning Authorities*' which seek to provide for genuine applicants who have a particular and sustainable need to live in a rural area.
- There is already a significant density of one-off housing in the area.
- Planning permission was previously refused for the development of a dwelling house on this landholding under PA Ref. No. 062935 / ABP Ref. No. PL08.221203.

6.2. Applicant's Response

None (late submission).

6.3. Planning Authority's Response

None.

6.4. Observations

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised in the grounds of appeal are:

- The principle of the proposed development / rural housing policy
- Overall design and layout / visual impact

- Traffic implications
- Wastewater treatment and disposal
- Appropriate assessment

These are assessed as follows:

7.2. **The Principle of the Proposed Development / Rural Housing Policy:**

In terms of assessing the principle of the proposed development having regard to the applicable rural housing policy it is of relevance in the first instance to note that whilst the proposed development site is located in an ‘*Area under Strong Urban Influence*’ as indicatively identified by the ‘*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*’, the detailed identification of the various rural area types at a county level as outlined in ‘Map 3.1’ of the Kerry County Development Plan, 2015 indicates that the site in question is located at a transitional point between a ‘*Rural Area under Strong Urban Influence*’ and a ‘*Stronger Rural Area*’. In this respect I would advise the Board that the extent of the ‘*Rural Areas under Strong Urban Influence*’ as identified in the Development Plan would seem to have taken account of a number of factors including the proximity of said areas to the immediate environs or close commuting catchments of the larger / hub towns and any associated pressure for the development of housing. By way of further clarity, it should be noted that the ‘*Stronger Rural Areas*’ have purportedly been determined having regard to the generally stable population levels within such areas (both within the well-developed town and village structure and the wider rural surrounds) which are supported by a traditionally strong rural / agricultural economic base.

Within the ‘*Rural Areas under Strong Urban Influence*’ the Planning Authority has adopted a restrictive approach as regards the eligibility of prospective applicants for rural housing and in this respect I would refer the Board to Objective RS-7 which states that favourable consideration will be given to the development of single houses for immediate family members (sons, daughters or a favoured niece/nephew) on family farms and landholdings, subject to compliance with normal planning criteria and environmental protection considerations. In contrast, within the ‘*Stronger Rural Areas*’ it is an objective of the Planning Authority, as set out in Section 3.3.1.1 of the Development Plan (with specific reference to Objective Nos. RS-10 & RS-11), to facilitate the provision of dwellings for persons who are an intrinsic part of the rural

community in which they are raised (subject to normal planning criteria and environmental protection considerations) and to consolidate and sustain the stability of the rural population and to promote a balance between development activity in urban locations, villages and the wider rural area. However, notwithstanding any dispute as regards the specifics of the 'rural area type' within which the subject site is located, it is of particular relevance to note that the Planning Authority aims to ensure that all future housing proposals in rural areas accord with the provisions of the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'*.

At this point, it should also be noted that in terms of landscape classification the proposed development site is located within a *'Rural General'* area and that it is an express requirement of Table 3.7 of the Development Plan that any rural housing permitted within such areas is to be used as a permanent place of residence. Furthermore, Objective RS-6 of the Plan states that all residential development permitted in rural areas will be required to be used as a primary and permanent place of residence and will be subject to an occupancy clause for a period of 7 years.

In its assessment of the subject proposal, the Planning Authority has determined that the proposed development site is located within a *'Stronger Rural Area'*, however, whilst I would acknowledge that the Development Plan has identified the various rural area types pursuant to the requirements of the *'Sustainable Rural Housing, Guidelines for Planning Authorities'*, 2005, considering the increasing proliferation of one-off rural housing development in the wider area, the evidence of the continuing pressure for the development of such housing given the proximity of urban centres such as Killarney town & Castleisland in addition to the N22 & N23 National Roads (i.e. major transport corridors serving the aforementioned urban centres), and the Board's determination ABP Ref. No. PL08.221203 wherein it was considered that a nearby site was located in an *'area under strong urban influence'*, I would have reservations in reconciling the designation of the subject location as a *'Stronger Rural Area'* when both the site context and the prevailing characteristics of the wider area are, in my opinion, more indicative of an *'Area under Strong Urban Influence'*. In this respect I would refer the Board to Section 3.2.1 of the Guidelines which advises Planning Authorities in the identification of specific rural areas within their respective counties that *'every effort should be made to avoid an overly-detailed and prescriptive map that involves abrupt and frequent change of area types'* and thus I

am inclined to conclude in this instance that whilst the subject site could be described as being located at the interface of two rural area types, having conducted a site inspection, it is my opinion that the site context is more comparable to an 'Area under Strong Urban Influence'. Accordingly, it is necessary to consider whether or not the applicant satisfies the relevant eligibility criteria, including 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.'

In addition to the foregoing, I would suggest that it is appropriate to have regard to the provisions of the 'Sustainable Rural Housing, Guidelines for Planning Authorities' which state that in facilitating housing intended to meet rural-generated needs eligible persons can include those working full-time or part-time in rural areas or persons who are an 'intrinsic part of the rural community' which are defined as follows:

'Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first homes near their family place of residence.'

In respect of the subject proposal, it is of relevance in the first instance to note that the applicants have indicated that the proposed dwelling house will serve as their primary and permanent place of residence. Accordingly, they would appear to satisfy the basic requirements of Objective RS-6 of the Development Plan, subject to the inclusion of an occupancy condition. Therefore, the question arises as to whether or not the applicants satisfy the applicable eligibility criteria as regards the site location within an 'Area under Strong Urban Influence'.

From a review of the available information, it is apparent that the co-applicant (Mr. Patsy Fleming) is acquiring the subject site from his uncle (Mr. Paul Fleming) and thus the proposal would appear to comply with the provisions of Objective RS-7 of the Development Plan. In further support of the proposal, it has been submitted that the first co-applicant (Mr. Patsy Fleming) was born and raised in Rossanean, Currow, Co. Kerry, approximately 5km (west) from the proposed development site, and that he is employed locally in his father's plant hire / contractor business, although he has also asserted that he is a self-employed farmer and that he continues to help out in the running of his uncle's farm having done so since childhood. By way of further establishing his links to this particular rural area, Mr. Fleming has also submitted that he has family members living in the immediate locality given that his cousin (and extended family) has resided in a property on the opposite side of the roadway from the application site for nearly ten years. With regard to the second co-applicant (Ms. Olivia Martin), it has been indicated that she is from the village of Cordal, Co. Kerry, approximately 11km northeast of the application site, and is employed as a retail assistant in the village of Ballydesmond (c. 15.5km east of the site). In respect of the applicants' housing circumstances, it should be noted that both applicants presently reside in their respective family homes.

On the basis of the foregoing, it is my opinion that the applicants satisfy the eligibility criteria set out in Objective Nos. RS-6 & RS-7 of the Development Plan and that of the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*'.

7.3. **Overall Design and Layout / Visual Impact:**

In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the subject site is not located within any identified scenic or amenity designation and that the wider area has instead been identified as '*Rural General*' on Map No. 12.1(k) of the County Development Plan. In this respect I would advise the Board that these '*Rural General*' areas are considered to comprise the least sensitive landscapes in the county and generally have a higher capacity to absorb development than other 'amenity' designations. Furthermore, the application site will not be overtly visible from any view or prospect listed for preservation in the Development Plan.

With regard to the specifics of the actual design and siting of the proposed development, the submitted proposal involves the construction of a conventionally designed dormer-style dwelling house which would appear to have been sited within the westernmost corner of a larger agricultural field in order to avail of the visual screening provided by the existing mature hedgerow and tree planting along the north-western and south-western site boundaries. It is also proposed to undertake a significant landscaping programme on site which have the effect of further reducing the overall visual impact of the proposal when viewed in a local context.

Having regard to the foregoing, and in light of the site context, on balance, I am satisfied that the submitted proposal is generally acceptable and will not unduly detract from the visual amenity or scenic quality of the surrounding area.

7.4. **Traffic Implications:**

The proposed development will be accessed via a new entrance arrangement onto the adjacent local roadway to the immediate northwest and in this respect it should be noted that it is proposed to remove a section of the existing roadside boundary ditch and to reinstate same in a recessed position in order to improve the available sight distance in both directions onto the public road. It is of further relevance to note that the proposed entrance would appear to have been purposely positioned in order to increase the separation distance from the sharp bend in the carriageway further southwest.

Having reviewed the available information, whilst I would concede that visibility from the proposed access is somewhat restricted, having regard to the low traffic speeds and volumes likely to be encountered along this section of minor rural roadway, I am inclined to conclude the available sightlines are within acceptable limits and will not give rise to a traffic hazard.

With regard to the capacity of the surrounding road network to accommodate the increase in traffic consequent on the proposed development, having conducted a site inspection, whilst I would acknowledge that the subject site is accessed via a narrow and poorly aligned local roadway with limited opportunities for two vehicles to pass side-by-side, I am satisfied that the surrounding road network has adequate capacity to accommodate the increased traffic volumes consequent on the subject proposal without detriment to public safety.

7.5. Wastewater Treatment and Disposal:

It is proposed to install a packaged wastewater treatment system which will discharge to a soil polishing filter and, therefore, it is necessary to review the available information in order to ascertain if the subject site is suitable for the disposal of treated effluent to ground. In this respect I would refer the Board in the first instance to the submitted Site Characterisation Form which details that the trial hole encountered 1.0m of gravelly SILT CLAY with cobbles whilst the remainder of the excavation to a depth of 2.8m below ground level comprised a shale bedrock. Notably, the water table was not encountered nor was any water ingress recorded. With regard to the percolation characteristics of the subsoil a 'T'-value of 43.19 min / 25mm and a 'P'-value of 45 min / 25mm were recorded which would constitute a pass in accordance with the EPA Code of Practice.

Having reviewed the available information, it would appear that the subject site is suitable for the installation of the treatment system proposed subject to compliance with the requirements of the EPA's Code of Practice: *'Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.<10)'*. In this regard it is of particular relevance to note that the submitted proposal will achieve the requirement for 900mm of free-draining unsaturated subsoil between the base of the percolation trenches and the bedrock.

With regard to the specific concerns raised in the grounds of appeal that the proposed development could potentially contribute to a deterioration in groundwater quality and the continued contamination of the appellant's private water supply, having regard to the prevailing soil conditions on site, as evidenced from the trial hole and percolation test results detailed in the submitted Site Characterisation Form, I would reiterate that the subject site is suitable for the installation of the proposed wastewater treatment system, subject to conditions. Furthermore, whilst it is regrettable that the appellant has not identified the precise location of his well relative to the proposed development site, the Site Characterisation Form has stated that there are no wells within a 250m radius of the subject proposal and, therefore, in accordance with the recommendations set out in Table B.3 of the EPA Code of Practice, it would appear that the separation distance between the proposed soil polishing filter and any wells in the surrounding area will significantly exceed the

recommended minimum. Accordingly, the proposed development would not appear to pose a risk to groundwater or public health.

(*N.B.* By way of clarity, the Board is advised that the applicant has obtained the necessary consent to connect to the Currow Hill Group Water Scheme).

7.6. **Appropriate Assessment:**

From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, it is situated approximately 5.0km southwest of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161) and 5.1km northeast of the Castlemaine Harbour Special Area of Conservation (Site Code: 000343). In this respect it is of relevance to 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 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. 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'.

Having reviewed the available information, including the screening exercise undertaken by the Planning Authority, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any protected site, the limited ecological value of the lands in question, and the separation distances involved

between the subject site and nearby Natura 2000 designations, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

Having regard to the “Sustainable Rural Housing, Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to the location of the site in a ‘Rural Area under Strong Urban Influence’ as defined in the current development plan for 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, would be acceptable in terms of traffic safety and convenience, and would not be prejudicial to public health. 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 as amended by the further plans and particulars submitted on the 8th day of June, 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.

- a) The external wall finishes of the proposed dwelling house shall have a neutral coloured nap plaster render, using colours such as grey or off-white.

- b) The roof colour of the proposed dwelling house shall be blue-black, or slate grey using tiles or slates. The colour of the ridge tiles/cappings shall be the same as the colour of the roof.
- c) White uPVC shall not be used for windows, external doors and rainwater goods.

Reason: In the interest of visual amenity.

- 4. 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.

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

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

6.

- a) The entrance gates to the proposed house shall be set back not less than four metres and not more than six metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height
- b) The existing front boundary hedge / ditch shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.
- c) That section of the front boundary hedge / ditch which is to be removed and reinstated in a recessed position shall match the remainder of the existing roadside boundary ditch, the exact height and location of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and visual amenity

7.

- a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details lodged with the

application, as amended by the further plans and particulars submitted on the 26th day of May, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

- b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8.

- a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.
- b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

- 9. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. 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.

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, as amended. 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 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.

Robert Speer
Planning Inspector

7th November, 2017