



An
Bord
Pleanála

Inspector's Report ABP-300122-17

Development	Dwelling and effluent treatment system
Location	Leitrim West, Moyvane, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/478
Applicant(s)	Padraig & Olivia Fitzmaurice
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Jim & Mary O'Connor
Observer(s)	None
Date of Site Inspection	1 st February, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located in a rural area on the west side of the N69 National Secondary Road at a junction Local Road L-1012, approximately 2km north-west of the village of Moyvane, 7km south of Tarbert and 11km north of Listowel in County Kerry. A laneway runs to the south of the site. It comprises a field that is enclosed by hedgerow around its perimeter and deep drains along the roadside boundaries to the east, north and south. The site is relatively flat and there is an opening onto the adjoining N69. There is a bungalow to the east of the site's local road frontage (the appellants' property) and further detached housing to the west and south. The applicants' family business, the Mail Road Garden Centre, is located to the north-east.

2.0 Proposed Development

2.1. The proposed development would comprise a four bedroom single-storey house. It would have a stated floor area of 269 square metres on a site area of 1.01 hectares. It would be served by mains water supply and a private on-site effluent treatment system. It is proposed to provide a vehicular access onto the local road adjoining the site to the north.

2.2. Details submitted with the application included a planning and design report, a completed Site Characterisation Form, and a letter from the landowner permitting the making of the application

3.0 Planning Authority Decision

3.1. Decision

On 10th October, 2017, Kerry County Council decided to grant permission for the development subject to 17 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner recommended that further information be sought in relation to pre-development archaeological testing, family property ownership in the area, and landscaping.

3.2.2. Other Technical Reports

The County Archaeologist noted there are no recorded monuments in the immediate vicinity but, given the scale of the proposal, recommended that pre-development testing be carried out.

The Roads Office recommended a grant of permission subject to conditions.

The Environment Section submitted that the site is suitable for an on-site effluent treatment system subject to conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

Transport Infrastructure Ireland submitted that it would rely on the planning authority to abide by official policy in relation to development affecting national roads.

3.4. Third Party Observations

A submission was received by the planning authority from Jim and Mary O'Connor. The grounds of appeal reflect the principal concerns raised.

3.5 Further information was sought on 17th July, 2017 and a response was received on 13th September, 2017. Following this the reports to the planning authority were as follows:

The County Archaeologist considered no further archaeological mitigation was required.

The Planner noted development plan provisions, reports received and the third party submission made. It was submitted that the proposal is for a one-off house located on lands zoned Rural General and designated as a Stronger Rural Area. It was noted that access would be off the local road. The visual impact of the proposal was considered acceptable and the applicants were viewed as complying with the Rural

Settlement Strategy. Third party objections were noted. A grant of permission was recommended.

4.0 Planning History

I have no record of any previous valid planning application or appeal relating to this site.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

Landscape

The site is located within an area zoned 'Rural General', one of the areas constituting the least sensitive landscapes in the county. The Plan notes that, from a visual impact point of view, such areas have the ability to absorb a moderate amount of development without significantly altering their character.

Rural Settlement

The site is located within an area designated a Stronger Rural Area.

Objectives include:

RS-10: Facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations.

RS-11: Consolidate and sustain the stability of the rural population and to promote a balance between development activities in urban areas and villages and the wider rural area.

6.0 The Appeal

6.1. Grounds of Appeal

The appellants reside in a dwelling immediately north-west of the site. The grounds of the appeal may be summarised as follows:

- Vehicles entering and exiting the site at the proposed entrance will impact on the appellants' residential amenity. The Council failed to consider the appellants' submission with regard to the location of the proposed vehicular entrance and failed to ask the applicants to explore alternative entrances.
- Setting back of the roadside boundary will increase traffic speeds along the rural road.
- The application was lodged without the benefit of a contiguous elevation as required under Article 23(1) of the Planning and Development Regulations and as such should never have been validated.
- The proposed site is not suitable for a waste water treatment plant by reason of poor percolating quality of its soils. It is noted that the Environment Section's assessment was a desktop study.
- Proposed landscaping will block southerly and easterly light to their property.

6.2. Applicant Response

The response to the appeal may be summarised as follows:

- The applicants' compliance with Kerry County Development Plan provisions is set out, in particular with regard to rural housing provisions, landscape amenity and development management standards.
- The proposed dwelling would not form a contiguous elevation with any existing buildings on surrounding sites and there is no basis for preparing a contiguous elevation.
- The positioning of the proposed house is cognisant of the appellants' property. Traffic entering and exiting the site will not have any material effect on the appellants' property. There will only be a slight increase over ground

levels required at the entrance, with minimal potential for impact on the appellants' amenities.

- The development will not affect the road width to the north of the site. Traffic speeds would be low in the vicinity of a junction with the N69. Providing access onto the local road rather than the national road is in accordance with TII policy.
- Proposed planting is sufficiently set back from the appellants' dwelling and of a limited height so as to not have any potential to visually impose or cast shadow on their property.
- With regard to soil suitability, a range of trees and hedging which require well-drained soil are growing on the site. The site characterisation assessment was undertaken in accordance with EPA requirements and the waste water solution is in accordance with its requirements.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the proposed development are rural housing need, the impact on residential amenity, traffic impact, and waste water treatment.

7.2 Rural Housing Need

7.2.1 The details submitted with the application indicate that the applicant Pdraig Fitzmaurice grew up in a house located to the east of the site, that he is son of parents who are landowners and who operate the adjacent garden centre, and that he will shortly assume sole responsibility for the running of the garden centre. It is also stated that the applicants are in rented accommodation and that the site has been in the family for generations. The submitted application form appears to indicate one or other of the applicants is an accountant who works in Limerick, while the other works on a family farm. Details submitted by way of further information would appear to indicate that the applicant's father owns the appeal site, the garden

centre, a small plot east of the garden centre, and a house some distance further east.

7.2.2 Having regard to the above, one must question why the applicants could be assumed to have rural housing need at this location. No level of details in any substantive manner have been provided to determine that there is some form of an entitlement that may be bestowed on the applicants to allow them to be considered for a house on this small plot. Evidently, their housing needs can be served within a serviced settlement in the vicinity of this site which would not preclude the applicant, Pdraig Fitzmaurice, from carrying out his role as proprietor of a commercial garden centre in this rural location.

7.2.3 I note that the proposed site is located within an area designated a 'Stronger Rural Area' in the current Kerry County Development Plan. Objectives include Objective RS-10 which seeks to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations. Based upon the information available on the appeal file, there are no details to reasonably determine that either of the applicants are an intrinsic part of this rural community.

7.2.4 With due regard to the extent of one-off housing that has developed in the immediate vicinity of this site, there is no planning merit in seeking to facilitate further unnecessary and poorly serviced housing at this remote rural location, adjacent to a national secondary road where the maximum speed limit applies.

7.3 Impact on Residential Amenity

7.3.1 The proposed development would not likely have any adverse impact on the amenity of the appellants' property. The proposed house would be sited close to the rear of the site and would not cause any loss of privacy by way of overlooking or any difficulties arising from overshadowing, overbearing impact or other such impacts on the appellants' existing house.

7.3.2 I note the appellants' concerns about the proposed access and landscaping. The proposed entrance and access driveway can be developed without any significant intrusion on the appellants' property. There would be a limited degree of filling required to develop the entrance and driveway. However, these works and the

functioning of the access cannot be viewed as a substantial development that would cause concern in delivering its purpose, providing a safe exit onto the adjoining local road. Glare from vehicle lights and vehicular turning movements could not reasonably be viewed as a problem, with boundary treatment addressing any potential adverse impacts. With regard to the proposed landscaping of the site along the western flank, I note the separation distance between the site and the appellants' house and the existence of a number of gable windows on the existing house. I consider the applicants' landscaping proposals affecting this part of the site to be both modest in extent and height and would cause not significant impacts for the adjoining dwelling.

7.4 Traffic Impact

7.4.1 I have no particular traffic concerns about the siting of the proposed entrance onto the adjoining local road, the available sightlines and the traffic turning movements that would be generated by the proposed development onto the local road. In the context of the lack of a rural generated housing need for this development, however, I seriously question the sustainability of permitting the development of a further house adjoining the N69 National Secondary Road and adding unnecessarily to the volume of traffic accessing this road from the junction.

7.5 Waste Water Treatment

7.5.1 I note the details of the site characterisation report submitted by the applicants to the planning authority and the desktop considerations of the planning authority's Environment Section. Having inspected the site, I can confirm for the Board that the site was extremely wet and heavy underfoot, that there are extensive rushes throughout this site, and that the deep drains around the perimeter of the site perform a very important drainage function for this plot. Notwithstanding the conclusions drawn in the site characterisation report and the desktop considerations of the Environment Section, I have grave concerns about the poor drainage characteristics of this site that are plainly evident in terms of the soft rush growth, the necessary land drains, and poor soil characteristics that culminate in ponding and which do not allow for surface water to percolate away safely on this site. Based on

these observations at this site, I am satisfied to conclude that the proposed development would pose a significant pollution threat. This concern about such an adverse environmental impact is compounded by the extent of development in the immediate vicinity of this site, their dependence on individual septic tanks and water treatment plants, and the consequent proliferation of such systems in a confined area.

Note 1: I note that the planning authority undertook a screening for Environmental Impact Assessment for this development. This is an application for a single dwelling. Furthermore, this is a development to which EIA does not apply and to which screening for EIA should not be undertaken. The Board will note that the outcome from undertaking screening for EIA when it should not be undertaken can have significant planning implications. No such screening is undertaken in this assessment.

Note 2: I note the proposed site is not on or near any Natura 2000 site. 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, the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any other Natura 2000 site in the wider area. A Stage 2 Appropriate Assessment is, therefore, not required.

8.0 Recommendation

I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The site of the proposed development is located within a “Stronger Rural Area” as designated in the Kerry County Development Plan 2015-2021. This is a rural

area where it is an objective to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised. It is considered that the applicants have not demonstrated that they have been raised in the area in which the site of the proposed development is located nor have they demonstrated that they are persons who are an intrinsic part of this rural community. The proposed development, in the absence of any identified locally-based social and economic need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, conflict with the Development Plan provisions relating to sustainable rural housing and would, thus, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the soil conditions on this site and the associated poor drainage characteristics, it is considered that, notwithstanding the proposed use of a proprietary effluent treatment system, the proposed development would constitute an unacceptable risk of pollution and would be prejudicial to public health.

Kevin Moore
Senior Planning Inspector

15th February 2018