



An  
Bord  
Pleanála

## Inspector's Report ABP-300169-17

---

<b>Development</b>	House, garage and septic tank
<b>Location</b>	Coolies, Muckross, Killarney, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/848
<b>Applicant(s)</b>	Linda Spillane
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Michael Horgan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> February, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development comprises part of a larger field immediate west of the Owgariff River in a rural location approximately 6km south-east of Killarney in County Kerry. The field is relatively flat and is bounded by hedgerow. The river forms part of the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC (Site Code: 000365) and part of the location for the proposed driveway to serve the house lies within the cSAC. Then field fronts onto a minor local road. There is extensive ribbon development and one-off modern houses in the immediate vicinity of this site.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the construction of a two-storey, three bedroom, detached house and a single-storey detached garage located to the side of the house. The floor area of the house would be 238.92 square metres and the garage would have a floor area of 41.36 square metres. The development would be located on a site with a stated area of 0.458 hectares. The house would be served by a mains water supply and by an on-site private septic tank system. The applicant would be acquiring the site from her uncle.
- 2.2. Details submitted with the application included a covering letter, a letter from the landowner giving consent to the making of the planning application, and a completed site characterisation form.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 20<sup>th</sup> October 2017, Kerry County Council decided to grant permission for the development subject to 21 conditions.

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

#### **3.2.1. Planning Reports**

The Planner noted development plan provisions, reports received, and an objection made. The house was considered suitable in its location. It was stated that the applicant was born and reared within the immediate area, with her family home being close by, that the dwelling would be a permanent place of residence, and that the applicant is a favoured niece of the landowner. A grant of permission was recommended subject to conditions.

#### 3.2.2. Other Technical Reports

The Biodiversity Officer noted the proposed driveway runs close to and partially within the Killarney National Park, Macgillycuddy Reeks and Caragh River catchment cSAC. It was noted that the driveway would be located on semi-improved grassland which is not an annexed habitat. It was considered that a buffer between the Owgariff River and the driveway should be maintained and that, with this and best practices in the management of waste water, no significant effect was considered likely on the cSAC.

The Environment Section considered that the site is suitable for an on-site effluent treatment system subject to a specified schedule of conditions.

The District Engineer submitted that there was no issue with sightlines or the entrance from a roads perspective.

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

Irish Water had no objection to the proposed development.

An Taisce requested controls on run-off and the retention of trees on the bank of the adjoining stream.

Fisheries Ireland submitted that a grant of permission should be contingent on the access road being set back from the adjoining river bank, the waste water treatment plant complying with EPA requirements, and contaminated waters being controlled at the construction phase.

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

An objection was received from Michael Horgan. The grounds of the appeal reflect the concerns raised.

## 4.0 Planning History

I have no record of any 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 Secondary Special Amenity', which constitutes a sensitive landscape that can accommodate a limited level of development.

Applications for houses will only be considered in these areas from applicants from the following categories:

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 applicant shall demonstrate a genuine rural employment need.

or

The applicant's family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality.

Objectives for landscape protection include:

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.

## 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.

## Designated Conservation Areas

Objectives include:

### *Objective NE-12*

Ensure that no projects which will 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, shall be permitted on the basis of this Plan (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.

## **5.2. Natural Heritage Designations**

The proposed site area of the driveway from the public road adjoins the Owgariff River. The river and this part of the site is located within the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- Discrepancies on who the applicant is, arising from public notices, are referenced.
- The applicant works 6km away from the site and there is serious concern about the carbon footprint that would result.
- A previous refusal of a planning application on the land is noted.
- The enforcement of compliance with landscaping conditions is queried.
- Reference is made to the adjoining river being a designated SAC, the site being with a Secondary Special Amenity Area, and concerns about flooding of the site.
- Reference is made to a newspaper article referring to the extent of rural housing in the Dingle area.
- Reference is made to a previous decision by the Board under Appeal Ref. PL 08.246033 refusing permission to Edward Lyne for a house and septic tank at Coolies for three reasons relating to the lack of housing need, excessive density of development, and the adverse landscape impact within a Rural Secondary Special Amenity Area.

### 6.2. Applicant Response

The applicant's response to the appeal may be synthesised as follows:

- The applicant is compliant with guidelines in the Kerry County Development Plan relating to a rural site and zoning.
- The proposed site has never flooded in the lifetime of the landowner.
- The house and driveway is designed in a sympathetic manner without causing obtrusiveness.
- The public road is adequate in width and surface and sightlines.

The response includes a letter from the landowners referring to the benefit of having their niece in close proximity and a letter from the applicant explaining her living circumstances.

### 6.3. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

## 7.0 **Assessment**

### 7.1. Introduction

7.1.1 The principal planning issues relating to the proposed development are rural housing need, the visual impact of the development, and the impact of the development on the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC.

### 7.2. Rural Housing Need

7.2.1 The proposed development would be located in a rural area remote from the town of Killarney, approximately 7km south-east of the town. This is an area that has undergone significant development change in recent times. This part of the highly scenic Muckross area on the approach to Lough Guitane is being destroyed by suburban-style housing in ribbon development form and in the form of one-off new houses. It is very evident that many of the houses are occupied by those who have no association with the functioning of agricultural land. Primarily, the control of one-off housing in the countryside is about ensuring orderly development occurs through management of the scarce resource that is agricultural land and is about protection of the environment such that protection of natural amenity results, limitations are placed on development to minimise visual intrusiveness, proliferation of private waste water treatment systems are avoided to address undue pollution threat, vehicular accesses are suitably controlled to avoid traffic hazard, etc. In the context in which the proposed development is to be located, i.e. in an area rife with haphazard development, the need to be particularly cognisant of planning and environmental protection cannot be greater. Thus, the applicant's need to have a

house at this location is paramount if one is to be responsible in management of the land resource in an area clearly under severe pressure from one-off housing and in a highly scenic landscape that is fading in qualitative terms due to the intrusiveness of lines of misplaced modern houses along critically important local roads that serve the needs of those with a genuine functional relationship with the land and the tourists for whom the wider community of Killarney is most reliant upon.

7.2.2 I note that under the Kerry County Development Plan the proposed site is located within an area designated a 'Stronger Rural Area'. It is my submission to the Board that such a designation is entirely misplaced. One only has to examine the extent of new housing in the immediate environs of the appeal site to reasonably determine that this is an 'Area under Strong Urban Influence', i.e. it is very clearly under the very strong urban influence of the prime tourist town of Killarney. I note for the Board that this location is referenced in Map 1 "Indicative Outline of NSS Rural Area Types" in the *Sustainable Rural Housing Guidelines for Planning Authorities* as an 'Area under Strong Urban Influence'. It is evident that this is a much more appropriate designation suited to this rural area. In line with these Guidelines, urban generated development in these areas should be directed to areas zoned for new housing development in cities, towns and villages.

7.2.3 Further to the above guidance, I note national planning policy as set out under the National Planning Framework published in February, 2018. This includes the following:

- \* With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- \* National Policy Objective 19 seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory



guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- \* Regarding housing, a National Core Principle includes prioritising new housing in existing settlements as a means to maximising a better quality of life for people through accessing services, ensuring a more efficient use of land and allowing for greater integration with existing infrastructure.
- \* National Policy Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

7.2.4 With regard to what has developed in recent times in the vicinity of the appeal site, it is very clear that there is an over-development of housing that is urban-generated and that such development, with no association with the functioning of the land, does little for the sustainability of a vibrant rural community who need to reside in the area. Any new housing of this nature now needs to be located where it is sustainable, where infrastructure has been invested in and where appropriate social and community needs can be met. Furthermore, it is clear that the applicant in this instance must have a genuine economic and/or social need to reside at the location proposed.

7.2.5 According to details provided in the planning application, the applicant is a 'favoured' niece of the landowner. In physical planning and environmental terms and in the context of national rural housing guidance and policy set out in the National Planning Framework, being a favoured niece has no bearing on determining the planning and environmental acceptability of the physical construction of a house on land in the countryside. Further details in the application indicate that the applicant is employed at Liebherr in Killarney. This employer is located to the north-west of Killarney Town. It is evident that the applicant has no economic need to reside at the location of the appeal site. The applicant has submitted also that she regularly helps out her uncle on the farm and has done so for many years. There is no understanding of what this assistance actually has been and is, whether she is integral to the functioning of the farm, what the nature of the farm is, the extent of the holding, etc. I note also that the Planner states in her planning authority report that the applicant was born and reared within the immediate area, with her family home being located close by, while there

are no details in the appeal file that demonstrate any such association with the area in which the appeal site is located.

7.2.6 Ultimately, one of the critical planning issues in this appeal relates to the applicant's need to reside in a location that has suffered greatly from modern one-off housing and ribbon development and whether it is appropriate, in physical planning and environmental terms, to be encouraging a further extension of this sprawl. From the details in the appeal file, it is very clear that the applicant does not have a need to be housed at this location and, being employed in the town of Killarney, her economic, social and community needs are best served where very significant public monies have been spent to provide public infrastructure and community and social facilities to serve the needs of persons such as the applicant, i.e. in the town of Killarney. One cannot reasonably conclude that there can be any entitlement bestowed upon the applicant for a house on this site based upon rural housing need. Such unsustainable development must be prohibited if the deterioration of this high quality landscape is to be slowed down and ultimately curtailed.

### 7.3. Visual Impact

7.3.1 The site of the proposed development is located within a landscape that is designated 'Rural Secondary Special Amenity'. According to the Kerry County Development Plan, this constitutes a sensitive landscape that can accommodate a limited level of development. The level of development is dependent upon the degree to which it can be integrated into the landscape. Having regard to my considerations above, it is clear that the limits to the level of development that may be accommodated are somewhat stretched in the Coolies area, given the extent of sprawl that has resulted in recent times.

7.3.2 The Development Plan requires that individual residential home units shall be designed sympathetically to the landscape and shall be sited so as not to have an adverse impact on the character of the landscape or natural environment. A proposal is required to be designed and sited so as to ensure that it is not unduly obtrusive. The proposed development before the Board constitutes a two-storey house similar in form and character to many of the new one-off houses prevalent within the wider

area. Its location, forming an extension and link to the lines of houses north and south of this site, and its siting abutting the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC emphasise how incompatible it is with preserving the natural amenity of this area that gives it its 'Special Amenity' status. It is irrelevant whether the applicant is a 'favoured niece' to bestow entitlement of a right to be afforded the opportunity to build a house at this sensitive location. The proposed development would distinctively erode further the natural qualities of the landscape that have resulted in this area's designation as a special amenity area. To protect this status, there is an obligation to prohibit development such as that now before the Board.

7.3.2 In conclusion, it is an objective of the Development Plan (Objective ZL-1) 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. Permitting further development of the nature proposed in this instance runs completely contrary to this objective.

#### 7.4. Impact on the candidate Special Area of Conservation

7.4.1 A significant part of this site lies within the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC and the rest of the site directly abuts this cSAC. No Natura Impact Statement was submitted by the applicant and there has been no Appropriate Assessment undertaken by the planning authority. Further to this, I note that it appears from examining planning applications in the Kerry administrative area that the planning authority, in general, consistently undertakes screening for Appropriate Assessment on virtually all applications, urban and rural. I note that despite this site being partially within a cSAC, no screening for Appropriate Assessment was undertaken and no details relating to AA were sought from the applicant.

7.4.2 This development poses a significant threat to the European Site. The Qualifying Interests of this site include salmon, otter, and lamprey. The Conservation Objectives are to maintain the favourable conservation condition of these species. The Owgariff River is an integral part of the cSAC. Constructing a driveway within the cSAC, providing associated drainage, laying of cables, trenching, etc. all directly impact on the cSAC. Carrying out the construction of a large house and a garage, providing

drainage, installing a waste water treatment system, etc. all potentially result in indirect impacts at the construction phase. Occupying the house poses very significant threats to water quality arising from the disposal of effluent and from other drainage provisions. I cannot reasonably conclude that one can be satisfied that it is the interest of protecting the Qualifying Interests of this cSAC to allow for the construction and occupation of the proposed development. In the context of the obligation to protect the natural amenity that is the Owgariff River and its environs, this proposed development is at best misplaced. In the absence of a Natura Impact Statement, I submit that the Board could not be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the cSAC.

## 8.0 Reasons and Considerations

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

1. Having regard to the location of the site within an Area Under Strong Urban Influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government (2005) and to National Policy Objective 19 of the National Planning Framework (February 2018) which seeks to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or in the Kerry County Development Plan 2015–2021 for a house at this sensitive rural location and does not comply with National Policy Objective 19. The proposed development, in the absence of any identified locally based 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, contravene the provisions of the Guidelines and the National Planning Framework and the objectives of the Development Plan and would,

therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development site is located within an area designated as a Rural Secondary Special Amenity area in the Kerry County Development Plan 2015-2021, which sets out a number of provisions to protect such landscape areas from development. These sensitive landscapes can only accommodate a limited level of development and this is dependent on the degree to which the development can be integrated into the landscape. The proposed development, when taken in conjunction with existing dwellings in the area, would constitute an excessive density of development by virtue of its impact on the landscape and would interfere with the character of the surrounding rural landscape, which it is necessary to preserve, and would, therefore, be contrary to objective ZL-1 of the Development Plan, which seeks to protect the amenity value of the landscape of the county. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
  
3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied 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, Macgillycuddy Reeks and Caragh River Catchment candidate Special Area of Conservation (European site No. 000365), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

---

Kevin Moore  
Senior Planning Inspector

5<sup>th</sup> March 2018