



An
Bord
Pleanála

Inspector's Report ABP.301165-18

Development	Demolition of existing building and construction of a single storey dwelling, plot entrance and access road, wastewater treatment system and associated site works
Location	Eightercua, Waterville, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/1263
Applicant(s)	Brian Curran & Annette Donnelly
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Brian Curran & Annette Donnelly
Observer(s)	None.
Date of Site Inspection	30 th June 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the townland of Eightercua, approx. 2km to the south east of Waterville just off the national secondary road, N70 (Ring of Kerry). It is located on the eastern side of the national road and is accessed from a private roadway which serves 2-3 houses and farmland. The N70 at this point is quite narrow with a solid white line. The site is located on the northern side of the private lane, with an existing house on either side of the site. There is an Recorded Monument of archaeological significance comprising standing stones (Ke098 047 – Stone Row and Enclosure) located immediately to the northwest of the house closest to the main road. This is a National Monument and is located at the top of a hill. It is a rural area which is predominantly agricultural but there are a number of single houses and farmhouses scattered around the countryside in the vicinity.
- 1.2.** The site area is given as 0.35ha. The site is rectangular in shape and is in an elevated position overlooking Lough Currane to the north east. There is an existing derelict shed on the site, which is single storey and constructed of stone. Although set well within the site, the shed is visible from the N70. There is a stand of trees which runs along the eastern boundary of the site from the private lane to the main part of the site.

2.0 Proposed Development

- 2.1.** It is proposed to erect a dwelling on the site of the existing shed. Although the description of the proposed development does not specifically mention demolition, it is assumed that the shed will be demolished to facilitate the construction of the proposed dwelling. The floor area is given as 202sq.m and the ridge height as 5.149m. The dwelling would be accessed by means of a new entrance from the private lane which is at the location of an existing agricultural entrance with farm track, sited between the existing entrances to the two adjoining dwellings. The site layout plan (submitted to the PA on 19/12/17) shows a wastewater treatment plant located to the east of the proposed house. The proposed development incorporates cutting and filling on the site to achieve the proposed FFL of 4220mm.

2.2. The proposed dwelling is designed as a H shaped block with the bedrooms located on the southern side of a central circulation space and the living accommodation on the northern side. The overall building envelope measures 18.3m x 16.3m. The central circulation space is set back from both the eastern and western building lines, creating a recessed entrance area and a recessed parking area to the rear. It is proposed to retain the existing stand of trees and to plant a row of Alder trees along the southern boundary from the entrance to the western boundary, and to plant hedging along the western and northern boundaries of the site. It is also proposed to improve sightlines at the entrance to the private lane from the N70 by clearing the top of the ditch to achieve a stated 70m sight distance in each direction.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for three reasons which were based on the traffic hazard, visually amenity and archaeological impact. The main elements of the reasons for refusal may be summarised as follows:

1. Intensification of the use of an access onto the N70, National Secondary Road at a location where the maximum speed limit is 100kph would, by itself and by reason of the precedent it would create, give rise to a traffic hazard and obstruction of road users, contravene National road policy and Objective RD-17 of the KCC CDP which seek to protect the capacity and safety of the national road network, and would not comply with the criteria for intensification of such an access under Section 7.2.1.2 of the CDP.
2. The site is located in an area of Rural Secondary Special Amenity, for which Objective ZL-1 of the CDP seeks to protect, and the proposal would seriously injure the visual and scenic amenities of the area as it would be a highly visible and obtrusive feature in the landscape.
3. The P.A. is not satisfied, in the absence of Ministerial consent, or a determination that such consent is not required, that the proposed development would not negatively impact on the adjacent National Monument.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report noted the location of the site in a **Stronger Rural Area** and in an area designated as **Rural Secondary Special Amenity**. It was further noted that a previous application for a similar development was refused on appeal by the Board in 2008 (227334) on the grounds of visual amenity and non-compliance with settlement policy due to fact that the area is highly scenic and under pressure for both permanent and holiday homes; that the proposed dwelling did not constitute a replacement dwelling for the shed which was in agricultural use; and on the grounds of road safety.

Visual amenity was highlighted as a concern and it was stated that had there been no other reasons for refusal, the P.A. would have requested the erection of sight poles. The report from the County Archaeologist was noted in which it was recommended that consent from the Minister be sought in respect of the impact on National Monument under S14 of National Monuments Act, and that in the absence of this, that permission be refused. Traffic safety and need to comply with policies regarding intensification of access to a National road were identified as an issue and it was noted that an alternative access to the National road was available elsewhere on the overall landholding, from Lake Road.

No issues were raised in respect of the proposed wastewater discharge proposals, surface water discharge proposals, occupancy/intrinsic ties to the area or residential amenity. The observation from An Taisce was noted. It was considered that EIA was not required given the nature, scale and location of the project. Appropriate Assessment Screening was carried out and it was concluded that there is no likely potential for significant effects to Natura 2000 sites. Refusal was recommended for reasons which were generally in accordance with the reasons given by the P.A. in its decision.

3.2.2. Other Technical Reports

Environment – The ground conditions and slope on site were noted as was the proximity to Lough Currane (270m) and family well (200m). The T value was noted as 50.59, which indicates that the site is unsuitable for a conventional septic tank

system. The proposal to provide a tertiary treatment system and final polishing filter was considered to be acceptable. No objection subject to conditions.

County Archaeologist – the site is located close to the Zone of Archaeological Potential for the recorded monument Ke098 047, stone row and enclosure, which is a National Monument subject to a Preservation Order (PO ID: 152; PO 5/79). As such, Ministerial Consent may be required under Section 14 of the National Monuments Acts 1930-2004. It is advised that a determination from the Minister be sought in this respect.

3.3. Prescribed Bodies

An Taisce – the proximity of the site to the Ring of Kerry Tourist Route, to Lough Currane and to a number of archaeological sites was noted. Concern regarding visual impact was raised and it was queried whether sight poles would be erected.

3.4. Third Party Observations

Email from Michael Healy-Rae T.D. 15/01/18 expressing strong representation on behalf of the applicants.

4.0 Planning History

PL08.227334 (PA 07/4122) – planning permission refused for a single dwelling on site for three reasons. These related to visual amenity/landscape impact; settlement policy; and traffic safety.

The Inspector noted that the policies for the area had identified the importance of tourism to the area and the need to protect the landscape, and had acknowledged that the area was under pressure for holiday homes. She further noted that there was no demonstrated housing need and that the applicant had relied upon the policy relating to replacement dwellings. However, as the structure was not an identifiable dwelling house at the time of the application and that any such use had been abandoned. Given the limited assimilative capacity of the landscape, the importance of tourism in the area and the lack of a demonstrated housing need, it was considered that the proposal should be refused.

The N70 was noted to be particularly constrained at this location and the sightlines at the junction were substandard. The Inspector considered that given the high volume of tourist traffic and buses, further intensification of the junction should not be permitted without its improvement. She considered that sightlines for vehicles egressing would be unsafe and that as the road is narrow, there would be no opportunity for oncoming vehicles to manoeuvre to avoid collision.

5.0 Policy Context

5.1. Spatial Planning and National Roads : Guidelines for Planning Authorities 2012

- 5.1.1. This policy recognises and asserts the strategic importance of the national road network to the country's economic, social and physical development. On this basis it seeks to ensure that the considerable investment in the national road network to date and in the future is protected in terms of the maintenance of the efficiency, capacity and safety of the network. Section 2.5 states in respect of lands adjoining the national roads to which speed limits of greater than 60kph apply that

“The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This provision applies to all categories of development, including individual houses in rural area, regardless of the housing circumstance of the applicant.”

At 2.6 it is stated that notwithstanding the provisions of Section 2.5, planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted with or taken on board the advice of the NRA and having followed the approach set out in 2.6 of the policy document.

5.2. Development Plan

Kerry County Development Plan 2015-2021

In terms of Rural Settlement Policy, (3.3), the site is located in a **Stronger Rural Area** which is described as one where population levels are generally stable within a

well-developed town and village structure and in the wider rural areas around them. The key challenge is stated to be to strike a balance between residential development in the towns/villages and in the rural areas.

Objectives RS1-RS6, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

There are two further objectives which relate specifically to Stronger Rural Areas, namely, **RS-10** which seeks to facilitate the provision of dwellings for people who are intrinsic to the area and **RS-11** which seeks to consolidate/sustain the stability of the rural population and to provide a balance between development activity in urban areas and villages and the wider rural area.

Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Secondary Special Amenity Area**, which are described as constituting sensitive landscapes which can accommodate a limited level of development, which will depend on the degree to which it can be integrated into the landscape. This is described as an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to SSAAs. These include a requirement for dwellings to be designed sympathetically to the landscape, to be sited such that they do not negatively impact the landscape, that they are not unduly obtrusive in terms of siting and design, with an emphasis on the retention of trees and hedgerows. In terms of settlement policy, sons/daughters or favoured nieces/nephews of the traditional landowner (in ownership for 10 years) will be required, or demonstration of genuine rural employment need or family living in locality prior to January 2003 with the applicant having been reared in the locality.

Access onto National roads

Policy Objective **RD-1** seeks to protect and safeguard the significant investment in the strategic economic infrastructure (particularly the national road network).

Objective **RD17** seeks to protect the capacity and safety of the national road and strategically important regional road network in the county and to ensure compliance with the Spatial Planning and National Roads Guidelines (2012) and the NRA Traffic and Transport Assessment guidelines (2007);

7.2.1.2 – The creation of an access or the intensification of usage of an existing access onto a National Road shall only be considered where it is in compliance with Spatial Planning and National Roads Planning Guidelines (DOECLG, 2012). In compliance with Section 2.6 of these Guidelines, the following exceptional circumstances as agreed with the NRA shall pertain in County Kerry in respect of the N70 Killorglin-Cahersiveen-Kenmare:

1. There is no suitable alternative non-national public road access available.
2. The development otherwise accords with the Development Plan
3. Safety issues and considerations can be adequately addressed in accordance with the NRA's Design Manual for Roads and Bridges.

5.3. Natural Heritage Designations

The site is within 15km of six European Sites. These are

- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) – c. 270m to north east;(Lough Currane)
- Ballinskelligs Bay and Inny Estuary SAC (Site Code 000335) - c. 2km to west;
- Kenmare River SAC (Site code 002158) - c. 3km to south;
- Valencia Harbour and Portmagee Channel SAC (Site code 002262) c. 12km to the northwest;
- Iveragh Peninsula SPA (Site code 004154), c. 6km to west; and
- Deenish Island & Scarriff Island SPA (Site Code 004175) - c. 10km to west.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Declan Sugrue Consultancy on behalf of the applicant. The main points raised may be summarised as follows:

1. Traffic and Transport

- The applicant disputes the speed limit referred to in Reason for Refusal no. 1 and states that it is incorrect. It is claimed that the speed limit at the moment is 60km/hr due to construction works in the area. Thus, the speed limit from Waterville Bridge to Coomacista Pass is 60kph, which is displayed in four different locations.
- The proposed improvements to the sightlines available at the entrance (taking back the fence by 5ft for 47 metres) would also benefit other road users, as confirmed by a Council official. It will also improve road safety here.
- Road improvement works are planned in terms of Ballybrick Junction Improvement Scheme. The speed limit on the N70 will be reduced from 100kmph to 80kmph.

2. Visual Amenity

- The proposed development cannot be seen from the Ring of Kerry. A photo from the N70 is attached as well as a photomontage.
- The applicant can provide extra screening to ameliorate any effects.

3. Ministerial consent regarding impact on the Recorded Monument

- There will be no impact on the recorded monument.
- The applicant's father has always facilitated access to the standing stones and this would continue.
- The shed was formerly a stone structure with a thatched A roof and inner stone walls and a loft. The previous owner lived in the shed while his house was being refurbished. It is not clear why ministerial consent would be required for the proposed development.

6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

6.3. Observations on the Grounds of Appeal

None received.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Transport policy and road safety
- Visual amenity
- Impact on the Recorded National Monument on adjacent site

7.2. Transport policy and road safety

7.2.1. The spatial Planning and National Roads Guidelines (2012), to which the Board must have regard, describe the function of National Roads (1.3) and state that the primary purpose of the National Roads network is to provide strategic links between the main centres of employment and population and to provide access between all regions. It is further stated that the Government has invested heavily in the provision and enhancement of the country's transport infrastructure systems and as such, it is of considerable importance that the efficiency, capacity and safety of the network is maintained. 'Strategic traffic' (1.4) is defined as major inter-urban traffic or inter-regional traffic which contributes to socio-economic development and the transportation of goods and products between main ports/airports. It is stated that the strategic traffic function of national roads must be maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national roads.

7.2.2. The section of road in question is one where the maximum speed limit applies. It is also part of the heavily trafficked tourist route, the Ring of Kerry. As such it is considered to be a route which facilitates strategic traffic as referenced in the guidelines, and the maintenance of capacity, efficiency and safety is therefore of considerable importance. It is noted that the appellant asserts that the speed limit is

currently 60kph, but it is acknowledged that it is a temporary speed limit to facilitate construction works, and that there are plans to reduce the speed limit to 80kph. However, I saw no evidence of a reduced speed limit during my site inspection and no evidence has been submitted to corroborate the claim of the plans to reduce the speed limit on the national road. In any case, neither a reduced (80-kph) limit nor a temporary speed limit would alter the effect of the policy, which applies to national roads to which speed limits of greater than 60kph apply.

- 7.2.3. One of the Key Principles of the Guidelines (1.5) includes reference to the creation of new access points or the intensification of the use of existing access points which can lead to the generation of additional traffic turning movements which introduce additional safety risks to road users. The Guidelines (2.5) state that this should be avoided and that the policy applies to all categories of development, including rural houses, regardless of the housing need circumstances of the applicant. It is further stated that a less restrictive approach should only be applied as part of the development plan process and in conjunction with the NRA (now TII).
- 7.2.4. The County Development Plan follows the guidance of the SP&NRGs in terms of RD17 and Section 7.2.1.2, which sets out the policy to protect the capacity and investment in the national road network and roads where a less restrictive approach will apply in Table 7.3. The P.A. has agreed certain criteria, in accordance with Section 2.6, with the NRA for certain stretches of the national road network within the county. This includes other parts of the N70 e.g. between Killorglin and Tralee. The criteria in relation to the N70 between Killorglin/Cahersiveen/Kenmare state that access should not be permitted/intensified where an alternative access to the property/landholding exists which would allow access from a non-national road. The remaining two criteria include a need to comply with the other policies and objectives of the Development Plan and with the NRA's Design Manual for Roads and Bridges
- 7.2.5. Access is gained from the N70 via a private lane which serves three existing houses, one of which appears to have been constructed quite recently. The Area Planner notes, however, that the plan of the overall landholding submitted with the application indicates that access could be gained to other sites within the landholding from the Lake Road rather than from the N70, as proposed. The access point is also located at a point in the road where the carriageway is very narrow and there are bends to the north and to the south. At the time of my site inspection, I noted that the

route was extremely busy with buses, cars and bicycles. Thus, the intensification of the existing access would undermine the capacity and efficiency of the N70 at this location.

- 7.2.6. The applicant has proposed to improve the sightlines to 70m in each direction. However, the design speed of the road is 100kph, for which the required stopping sight distance is 215m (DMRB NRA TD 41-42/11, as updated by TII DN-GEO-03031 (2017)). Table 1.3 of the DN-GEO-01031 document provides for some scenarios where one step or two steps below the desirable minimum could be considered, but even such reduced sightlines would require stopping distances of 160m and 120m, respectively. Even if the design speed is reduced to 80kph, as suggested by the applicant, this would require sightlines of 160m in each direction. The narrow carriageway is bounded on each side by high ditches, which exacerbates the problem. Notwithstanding the applicant's proposal to set the fence back, it is considered that the required sightlines could not be achieved at this location.
- 7.2.7. In conclusion, it is considered that the proposed development would result in the intensification of the existing access onto the N70, which is a Strategic National Secondary Road, which would generate additional traffic turning movements at a point in the road where sightlines are restricted in both directions and where the speed limit is 100kph. The proposed development would, therefore, give rise to a traffic hazard, and would contravene Objective RD17 of the current Development Plan for the area and the TII Spatial Planning and National Roads Guidelines 2012, which seek to protect the capacity, efficiency and road safety of the national road network.

7.3. Visual amenity

- 7.3.1. It is proposed to erect a dwelling in place of the existing small stone barn on the site, which is located in an area designated in the CDP as a Rural Secondary Special Amenity Area. These areas are described as sensitive landscapes which can accommodate a limited amount of development. The level of development is dependent on matters such as the degree to which a development can be integrated into the landscape. It is noted that this amenity policy is additional to the rural settlement policy, and the CDP states that where there is an overlap, the amenity policies will take precedence. Development in such areas are required to be

designed sympathetically to the landscape, to be located on sites that do not negatively impact on the landscape and such that they are not unduly obtrusive in their siting and design.

- 7.3.2. The applicant claims that the proposed dwelling would not be seen from the Ring of Kerry, that it is well screened and that it is proposed to screen it further with additional hedging and tree planting. However, the site is located in an elevated position and the existing barn is visible from the Ring of Kerry. At present, the landscape in the vicinity of the site is dominated by the 2-storey dwelling to the west, which is painted white, in an elevated position, together with the large, newly constructed 2-storey dwelling to the south-east, which has not been landscaped, and the band of trees along the ridge line of the hill, which creates a strong visual feature on the hill. The proposed dwelling would add to these features and create visual clutter on the hill. In addition, the site overlooks the highly scenic Lough Currane to the north, together with the lake road which lies between the site and the lake. The proposed development would be highly visible from both the lake and the lake road.
- 7.3.3. The siting of the proposed dwelling, in conjunction with the existing development and landscape screening, in this exposed and elevated scenic landscape, in close proximity to the Ring of Kerry tourist route and overlooking Lough Currane, would not be in accordance with the Objective ZL-1 of the development plan which seeks to protect such Rural Secondary Special Amenity Areas. I would agree with the P.A., therefore, that the proposed development would constitute a highly visible and obtrusive feature in this sensitive landscape. It is considered that the proposed development should be refused on these grounds. It is also noted that the Board, in its decision on the previous planning proposal for a dwelling on the site, cited this as a reason for refusal.

7.4. Impact on the Recorded National Monument

- 7.4.1. The standing stones and enclosure, which are recorded monuments and constitute a National Monument are within very close proximity of the site. This monument is in a very exposed and elevated location, which is probably a characteristic of such archaeological sites. The presence of the monument in this location, so close to the Ring of Kerry contributes to the scenic value and cultural heritage of the area. The setting of the monument is already somewhat affected, however, by the presence of

the white-painted house on the brow of the hill, and to a lesser extent, by the linear screen planting, which detract from the dominant position occupied by the monument. It is considered that the introduction of a second house on the hill, together with the proposals to cut and fill the site, would be likely to detract further from the setting of the National Monument.

- 7.4.2. The County Archaeologist has pointed out that the proposed development site is located adjacent to a zone of archaeological potential as defined in the RMP and that as these are National Monuments, which are subject to a Preservation Order, Ministerial Consent is likely to be required under Section 14 of the National Monuments Acts 1930-2004. Thus, I would agree with the Planning Authority that the siting of the proposed dwelling in such close proximity to the National Monument, in the absence of either such consent or a determination stating that such consent is not required, would be contrary to the proper planning and sustainable development of the area.

7.5. Appropriate Assessment

- 7.5.1. The P.A. reports screened out appropriate assessment. It was noted in a previous section of my report, the site is located approximately 270m from a Natura 2000 site, namely, Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment cSAC (000365). The closest part of the SAC is the lake, Lough Currane, which is down-gradient of the proposed site. The other European sites in the vicinity are a minimum of 2km from the site.
- 7.5.2. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the SAC, it is considered that Appropriate Assessment can be ruled out at this stage.

8.0 Recommendation

- 8.1. It is recommended that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. It is considered that the proposed development, which would result in the intensification of use of an access onto the N70, which is a Strategic National Secondary Road, at a point where a speed limit of 100km/h applies and the sightlines at the junction are restricted in both directions, would endanger public safety by reason of a traffic hazard and the additional and conflicting traffic movements generated by the proposed development would interfere with the safety and free flow of traffic on the public road. The proposed development would, therefore, contravene Objectives RD1 and RD17 of the current Kerry County Development Plan 2015-2021 to preserve the level of service and carrying capacity of the National Secondary road and to protect the public investment in the road and would be contrary to the proper planning and sustainable development of the area.
2. The site is located in an elevated position in an area designated in the current Kerry County Development Plan 2015-2021 as an area of Rural Secondary Special Amenity, by reason of its sensitive landscape quality, in relation to which policy Objective ZL-1 seeks to control development in order to protect the landscape. It is considered that the construction of a house on the site, in conjunction with existing adjacent development, would result in a highly visible and obtrusive feature which would be detrimental to the high scenic amenity of the area. The proposed development would, therefore, contravene this policy and would be contrary to the proper planning and sustainable development of the area.
3. The site is located in close proximity to a National Monument as defined in the Record of Monuments and Places and the Sites and Monuments Record as Ke098 047, stone row and enclosure. Having regard to the information submitted with the application and appeal, and to the absence of a Ministerial consent or a determination that such consent is not required, the Board is not satisfied that the proposed development would not negatively impact on the

setting of the National Monument. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Senior Planning Inspector

21st August 2018