



An
Bord
Pleanála

Inspector's Report ABP.301216-18

Development	Erect a dwelling house with a stand-alone domestic garage; install a septic tank and percolation area and construct a new access with splayed front boundary entrance walls and all associated site works.
Location	Knockaneacoolteen, Fieries, Killarney Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/1299
Applicant(s)	Anne and Clive Counihan
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	Third
Appellant(s)	Michael Horgan
Observer(s)	None.
Date of Site Inspection	2 nd July 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located in the townland of Knockaneacoolteen, approx. 10km to the southeast of Tralee, on the western side of the N22, Tralee-Killarney road. This is a rural area which is characterised by farmland with several one-off houses and some other uses such as a large garden centre to the southeast. The site forms part of an active farm. It is accessed by means of a long winding laneway which leads northwards from a third-class road between Ballyfinnane and Riverville Cross Roads. The laneway serves a number of houses and terminates at the entrance to the farm, from where a private farm-track leads eastwards to the farmhouse and farmyard.
- 1.2. The site area is given as 0.39ha. The site is rectangular in shape and has no road frontage. It is proposed to provide a new access drive from the private lane to serve the site. The family landholding extends northwards and eastwards from the local road and to the south of the farm track. The site is relatively level but the ground levels generally fall away to the south. The eastern, northern and western boundaries are well screened by mature tree lines and hedgerows.

2.0 Proposed Development

- 2.1. It is proposed to erect a single-storey dwelling in the centre of the site with a stated floor area of 185.81sq.m and the maximum height as 7.3m. The dwelling would be accessed by means of a new entrance from the private lane leading to the farmhouse. The proposed driveway crosses the field to the south adjoins the local road. The site itself is located to the northwest of the farmhouse. There is an existing dwelling house on a site to the northwest of the junction of the local road and the farm track, which is outside the landholding.
- 2.2. The proposed dwelling is designed as a single storey structure with an attic void. The accommodation incorporates three bedrooms, a living room/kitchen and a sitting room. The applicant has indicated that she is the daughter of the landholder and works on the farm. It is proposed to erect a single domestic garage in the north-eastern corner of the site and to provide a septic tank with a percolation area in the south-western corner.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to 18 no. conditions. These were generally of a standard type. Condition 2 required payment of a development contribution of €2,716.20. Conditions 3 and 4 relate to occupancy conditions requiring the dwelling house to be the first place of residence for a period of 7 years and not to be used as a holiday home. Conditions 17 and 18 restricted the ownership and use of the garage to single ownership with the dwelling and to domestic purposes, respectively.

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 General**. It was further noted that there are a number of registered monuments on the site and in the surrounding area. It was pointed out that a previous application for a similar development by the same applicants on a site to the south was refused in June 2017 (Ref. 17/406). Reports from County Archaeologist and from SAU environment were noted. Third party objection from appellant was also noted.

Appropriate Assessment Screening was carried out and it was noted that the sites lies within 15km of eight Natura 2000 sites. It was concluded, however, that there is no likely potential for significant effects to Natura 2000 sites.

Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

Environment – The SAU carried out a visual assessment of the site and noted that the lands are in agricultural use with grass, some rush growth, with firm ground conditions and some surface water ponding due to back slope. The T value was noted as 25.14, which indicates that the site is suitable for a conventional septic tank system. The proposal to provide a septic tank and percolation area was considered to be acceptable and suitably sized for a PE of 5. It was noted that provision is

required for 1200mm of suitable permeable soil between the point of infiltration of effluent and the aquifer to be protected. However, the application provides in excess of the amount required which is stated as complying with the required groundwater protection response (R1). All appropriate separation distances have been adhered to. No objection subject to conditions.

County Archaeologist – the site is located adjacent to the zone of archaeological potential/notification, as defined in the Record of Monuments and Places around recorded monument Ke039 087, millstone. However, there is sufficient distance between the stone and the development site. No mitigation is required.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

Michael Horgan – backland and haphazard development and concerns regarding the carbon footprint generated by the development due to remote location.

4.0 **Planning History**

There is no planning history on the application site but a planning decision was made in respect of a site to the south, within the same landholding.

PA Ref 17/406 – planning permission refused for construction of a single house, domestic garage, new access and secondary wastewater treatment system. The site is located to the south of the farm track on the southwestern corner of the junction with the local road. Permission was refused for one reason which was based on the negative impact on a recorded monument (Ke 039-087), which would be directly impacted, and the proposed development would, therefore, materially contravene Objective H-26 of the KCC County Development Plan.

5.0 Policy Context

5.1. 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 **Rural General Area**, which are described as constituting the least sensitive landscapes which can accommodate a moderate amount of development, without significantly altering its character. 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 RGAs. These include a requirement for dwellings to be integrated into the landscape. Policy objectives ZL-1 and ZL-4 apply which seek to protect the landscape of the County as a major economic asset and invaluable amenity and to regulate residential development in Rural Areas in accordance with zoned designations and the Settlement Policy set out in Section 3.3

5.2. Natural Heritage Designations

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

- Slieve Mish Mountains SAC (Site code 002185), approx. 2km to west.
- Ballyseedy Wood SAC (Site Code 002112), approx. 3km to north.
- Tralee Bay & Maharees Peninsula, West to Cloghane SAC (Site Code 002070) approx. 5km to Northwest;
- Tralee Bay Complex SPA (Site code 004188), approx. 5km to Northwest.
- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site code 004161), approx. 6km to northeast.
- Castlemaine Harbour SAC (Site code 000343), approx. 10km to southwest.
- Castlemaine Harbour SPA (Site code 004029), approx. 10km to southwest.
- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) approx. 15km to south;

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is a third-party appeal against the decision to grant planning permission. It was submitted by Michael Horgan on behalf of Lakes and Rivers of Kerry. The main points raised may be summarised as follows:

1. Wastewater treatment

Half the septic tanks in the Killarney Area fail tests, according to The Irish Examiner newspaper article (enclosed).

2. Contrary to proper planning and sustainable development of area

Kerry county has been destroyed by development such as that proposed, (see newspaper articles from The Irish Times (5/8/14) and The Kerryman (20/4/11)).

The proposed development is backlands development of a haphazard nature

6.2. **Planning Authority Response**

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

6.3. **Response from first party**

The first party responded to the grounds of appeal by email on 18th April 2018. The response was mainly in the form of a rebuttal of the grounds of appeal.

6.4. **Observations on the Grounds of Appeal**

None received.

7.0 **Assessment**

7.1. It is considered that the main issue arising from the appeal relates to Settlement Policy in the Stronger Rural Areas and the Rural General Amenity Area and the appropriateness of using a septic tank and conventional percolation area to dispose of wastewater.

7.2. **Compliance with Settlement policy**

7.2.1. The site is located in a Stronger Rural Area, which is one where the population levels are generally stable and the key challenge is to maintain a balance between the development activity in the urban areas and housing proposals in the wider rural area. Objectives RS-10 and RS-11 seek to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community as well as consolidating and sustaining the stability of the rural population.

7.2.2. The Rural General Amenity Areas relate to the least sensitive landscapes which have a moderate assimilative capacity for development. The level of development is also regulated by settlement policies in accordance with Section 3.3.1, Table 3.7 and Objectives RS1-RS-4 of the Development Plan. The applicant must demonstrate that the proposed dwelling shall be used as a permanent place of residence.

7.2.3. The response to the grounds of appeal set out the applicants' circumstances. The applicants currently live on the landholding with one of the Applicants' parents (Ann Counihan). It is also stated that she is a full time dairy farmer and works on the farm alongside her parents. I would accept that she is an intrinsic part of the community in which she was raised and that the applicants have demonstrated that they have a rural generated housing need for a house at this location. It is noted that the applicants agree to the conditions restricting occupancy and permanent residence as opposed to a holiday home.

7.3. **Wastewater treatment**

7.3.1. The proposed development seeks to provide a septic tank and percolation area in the south-west corner of the site. The SAU – Environment Section has stated that a visual assessment has been carried out and that, having regard to the information submitted with the application, the proposed wastewater treatment system is considered to be appropriately designed for the proposed development on this site. The proposal also meets the separation distance requirements.

7.3.2. The applicants, in response to the grounds of appeal, note that the newspaper article referred to regarding failure of septic tanks, relates to old, unregulated, uncertified tanks. It is pointed out, however, that the applicants have submitted a detailed site assessment report carried out by a qualified engineer, and that the treatment system will be installed and certified by a qualified Assessor, as required by the P.A. conditions. Furthermore, after installation, the tank will be certified, and a report sent to the planning authority, and thereafter, will be regularly maintained and serviced to the manufacturer's instructions.

7.3.3. It is considered that having regard to the information submitted with the application regarding the characteristics of the site and design of the proposed treatment system, and to my observations on site, which are generally in accordance with those described in the SAU report, the proposed wastewater treatment system would be appropriate, subject to standard conditions requiring compliance with EPA requirements.

7.4. Appropriate Assessment

7.4.1. The P.A. reports screened out appropriate assessment. It is noted that the closest European site is Slieve Mish Mountains cSAC (002185), which is 2km to the west. The site is located approximately 3km from Ballyseedy Wood cSAC (002112).

7.4.2. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the location of the site within an area designated as a Stronger Rural Area and a Rural General Amenity Area in the current Kerry County Development Plan 2015-2021 and to the rural generated housing need of the applicants for a house at this location, 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, 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 development, when completed, shall first be 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 the 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, as amended, 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 shall match the colour of the roof.
- (c) White uPVC shall not be used for windows, external doors and

rainwater goods.

(d) The finished floor level shall be as shown on the submitted drawings.

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. (a) The proposed septic tank drainage system shall be in accordance with the standards set out in 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) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the standards set out in the document entitled "Code of Practice-Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.< 10) – Environmental Protection Agency, 2009".

(c) 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 raised percolation area is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

6. (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.

7. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.

Reason: to ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

8. 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 the 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.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided 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.

Mary Kennelly
Senior Planning Inspector

3rd September 2018