



An
Bord
Pleanála

Inspector's Report ABP 301487-18

Development	Dwelling, septic tank and percolation area, access and all associated works.
Location	Tullygarran, Chute Hall, Tralee, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/1045
Applicants	Tara Walsh & Graham Sheehy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party vs. Grant
Appellants	<ol style="list-style-type: none">1. Tim Dalton2. Eamon & Kathleen Hickey3. Eamon Hickey Jr.
Observer(s)	None
Date of Site Inspection	26/07/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.25 hectares, is in the townland of Tullygarran c. 4.5km to the north of Tralee town. It is setback from the local road L-2020 along which the 80kph speed limit applies and which was noted to be relatively lightly trafficked on day of inspection. The general area is characterised by one off housing of varying designs. The nearest are 2 no. two storey dwellings (1no which is currently under construction) c. 120 metres to the south with direct road frontage, whilst there is a single storey dwelling c. 100 metres to the south-west. There are four existing dwellings along 240 metres of road frontage (same side).
- 1.2. The site, which forms part of a larger field, is setback c.165 metres from the road and is rectangular in shape. An agricultural track which facilitates access to the adjoining lands including an agricultural shed to the north-east bounds the site to the east. A stream/small watercourse and hedgerow delineate the rear (northern) boundary.

2.0 Proposed Development

The application was lodged with the planning authority on the 20/10/17 with further plans and details submitted 09/02/18 following a request for further information dated 12/12/17. Copies of revised public notices were submitted 23/02/18. Clarification of further information was received 16/03/18 and 10/04/18 following a request dated 13/03/18.

As amended the proposal entails a 1 ½ storey L-shaped dwelling with a stated floor area of 293 sq.m. The dwelling is to have a ridge height of 6.3 metres with a plaster external finish.

The site is to be served by a c.165 metre long driveway from the local road.

The dwelling is to be served by a septic tank and percolation area. A completed site characterisation form accompanies the application. A PE of 6 is accounted for.

The depth from ground surface to water table in the trial hole was recorded at 2.05 metres. A T value of 32.22 and P value of 38.56 were calculated.

Water supply is to be from public mains.

One of the applicants is the daughter of the landowner

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 16 conditions generally detailing standard planning and engineering requirements. Of note:

Condition 3: Occupancy clause

Condition 4: Dwelling to be used as primary year round residence.

Condition 6: Finished floor level to be no more than 300mm above existing ground level. Cross section indicating existing and proposed ground levels to be submitted.

Condition 7: No garage or other exempted structure to be erected within 4.5 metres of any shared boundary.

Condition 13: Access to be as per details submitted 09/12/17.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 12/12/17 states that due to the setback from the road the proposal would not have a significant negative impact. The impact on the house to the north-west needs further assessment. The height of the house is of concern. Further information is required on the access arrangements. It has the potential to negatively impact on the residential amenity of adjoining property. A request for further information is recommended.

The report includes a subthreshold EIA screening and AA screening.

The 2nd report dated 09/03/18 following further information recommends clarification of further information regarding the site access and sight distances available. It is not considered that the area is overdeveloped or that a new dwelling at this location would impact on the amenity of nearby properties.

The 3rd report dated 10/04/18 following clarification of further information notes that adequate sight lines at the proposed access are possible. A grant of permission subject to conditions is recommended.

3.2.2. Other Technical Reports

Environment Section in a report dated 22/11/17 recommends further information seeking clarification of the PE loading. The 2nd report dated 15/02/18 following further information has no objection to the proposal subject to conditions.

3.3. Prescribed Bodies

Irish Water has no objection.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to the issues set out in the 3rd party appeals summarised in section 6 below.

4.0 Planning History

I am not aware of any previous planning applications on the site.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015

Section 3.1 – urban sprawl on the edge and environs of the Hub towns (and on the edge of settlements) should be discouraged and a clear character distinction between built-up areas and the open countryside should be maintained.

RS-1 – ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG) and the Development Guidance document of this plan.

RS-2 – require the design of rural housing to have regard to the Building a House in Rural Kerry: Design Guidelines 2009.

RS-4 – Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.

RS-5 – ensure that future housing in all rural areas complies with the EPA's 2009 Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Dwellings.

RS-6 – ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

The site is located within an area designated as a Rural Area under Strong Urban Influence.

RS-7 – ensure that favourable consideration is given to individual one off house developments for immediate family members (sons, daughters or favoured niece/nephew) on family farms and land holdings subject to compliance with normal planning criteria and environmental protection considerations.

The site is within an area designated Rural General. This is considered to be the least sensitive landscape and from a visual impact point of view has the ability to absorb a moderate amount of development without significantly altering their character.

5.2. **Natural Heritage Designations**

None in the vicinity

6.0 **The Appeal**

6.1. **Grounds of Appeal**

3 no. 3rd Party appeals against the planning authority's notification of decision to grant permission refer.

6.1.1. Eamon Hickey Jr.

- Building a 1 ½ storey dwelling in between the farmhouse he is renovating and his family home would destroy their views.
- The dwelling will overlook his parents dwelling and will result in loss of privacy.
- Flooding is an issue with natural springs on the land.
- Percolation is problematic.
- The river which is 4 metres from the site has not been delineated on any plan.
- The density of development is unsuitable for such an urban area.
- The number of entrances onto a busy road in proximity to a dangerous bend would result in a traffic hazard.

6.1.2. Eamon & Kathleen Hickey

- Their dwelling will be overlooked and will suffer loss of privacy.
- The site is prone to flooding. Percolation is problematic.
- The road is very busy with 8 entrances within 150 metres.

6.1.3. Tim Dalton

- The application is invalid. The drawings do not comply with article 23 of the Planning and Development Regulations.
- The detail provided on the drawings is inadequate as to allow for a proper assessment.
- The area of the site appears to be inadequate to accommodate the proposed development which would lead to an unacceptable increase in the density of septic tanks in the area.
- There are a large number of groundwater wells and springs in close proximity which could be adversely affected by the proposed percolation area.
- The river bounding the site is not delineated on any plan.
- The proposal is not consistent with the policies of the County Development Plan.

- It has not been demonstrated that adequate sightlines can be provided at the entrance. The proposal will increase traffic movements close to a dangerous bend where the 80km/h speed limit applies. The proposal would give rise to a traffic hazard.
- The proposal would have an adverse impact on the amenities of adjoining residential properties.
- Procedural issues in the handling of the application by the planning authority and absence of reference to details received after 09/02/18 in condition 1 arise. Reference is also made in condition 13 to a drawing received 09/12/17. The said drawing cannot be located.
- It is not possible to construct wing walls splayed at an angle of 45 degrees using the layout as submitted.

6.2. **Applicant Response**

The submission by Des O'Sullivan on behalf of the applicants states that the conditions attached to the planning authority's notification of decision to grant permission are accepted. The objections are therefore irrelevant. Mr. Dalton does not reside in the area full time. Therefore his objections are unjust. The proposal does not impose on him.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with settlement location policy
- Siting and Layout of Dwelling
- Site drainage and effluent disposal
- Procedural/Other Issues
- Appropriate Assessment

7.1. Compliance with settlement location policy

The site is within a rural area identified as being under strong urban influence in the current County Development Plan. In view of the site's proximity to Tralee and its obvious attractiveness for urban generated housing demand this designation is considered to be entirely reasonable. As noted on day of inspection the area is characterised by material levels of one off housing, the nearest being the three dwellings c. 100 – 120 metres to the south.

Subsequent to the adoption of the Development Plan I note that the National Planning Framework, published in February 2018, addresses the issue of rural housing. Of particular note 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 whilst sustaining vibrant rural communities. In addition National Policy Objective 19 seeks to facilitate the provision of single housing in the countryside in areas under urban influence based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the siting and design criteria for rural housing in statutory guidelines and plans and to the viability of smaller towns and rural settlements.

In such a designated area the current development plan allows for a presumption in favour of immediate family members (sons, daughters or favoured niece/nephew) seeking permission for a dwelling on family farms and land holdings.

Notwithstanding, in view of the pattern of development in the area to date and the

above national policy provisions, I submit that a high bar must be set in terms of demonstrating an applicants' need to have a house at this location based on genuine economic and/or social need so as to ensure the responsible management of the land resource in an area under pressure from one off housing. In my opinion the details provided in this instance fall materially short. One of the applicants is stated to be daughter of the land owner. A map delineating the landholding is on file on which I note there are 2 no. two storey dwellings (one still under construction) both stated to be owned by family members. Whilst the applicants' address is given as Tullygarran no details are provided to support their case as to either the economic or social need to reside on the subject site. On the basis of the information on the file it cannot reasonably be concluded that there can be any entitlement bestowed on the applicants for a house on this site based on rural housing need.

7.2. Siting and Layout of Dwelling

It would appear the proposed siting and layout of the dwelling is dictated by the absence of undeveloped road frontage in the family landholding and the need to maintain a set back from other dwellings. As a consequence the proposed dwelling is to be set back over 180 metres from the road and served by a c.165 metre long access driveway.

With such a set back from the local road the proposal would be considered to constitute backland development and would add to an already unacceptable density of development which exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing in an unzoned rural area which, in itself, would lead to an erosion of the rural and landscape character of this area. It is also contrary to the current county development plan aim seeking to discourage urban sprawl on the edge and environs of Hub towns and edge of settlements. Invariably to allow for such a layout would set an undesirable precedent for similarly designed development.

In view of the setback of the dwelling from the dwellings both to the south of at least 100 metres I do not consider that issues of overlooking or loss of privacy would arise.

The proposed site access is onto a relatively straight section of the local road where adequate sight distances would be available in both directions. I note that there are existing dwellings in close proximity to the bend to the west as referenced in the appellants' submissions.

7.3. Site Drainage and Effluent Disposal

The application is accompanied by a completed site characterisation form wherein it is noted that groundwater was encountered at a depth of 2.05 metres with a T value of 32.22 and P value of 38.56 calculated.

As evidenced on day of inspection the existing site vegetation, dominated by rushes, would suggest poor drainage characteristics with a drain/stream along the northern boundary. I note that the latter is not referenced in the said characterisation form. I also note reference in the appellants' submissions to wells in the vicinity. The completed form states that none were visible within 250 metres. The pattern and density of development served by individual effluent treatment systems is also noted with approx. 5 dwellings served by individual effluent treatment systems within 250 metres.

I submit that the detail on file is somewhat conflicting and on this basis I do not consider that there is sufficient evidence to support the view that the site is suitable for the disposal of effluent disposal without giving rise to public health concerns.

7.4. Procedural/Other Issues

The validity of the application has been queried citing inadequacies in the documentation accompanying the application. I note that the Planning Authority was satisfied that the said details were in accordance with the requirements of Articles 18 to 23 of the Planning and Development Regulations 2001, as amended, and therefore deemed the application to be valid.

I also note the fact that the reference to drawings received 09/12/17 in condition 13 does not appear to be correct. The drawing in question was received 09/02/18.

I draw the Board's attention to the fact that the Local Authority Planner's Report on this case includes a formal EIA Screening. In my view such a screening exercise

(formal EIA determination) is not warranted for a proposed development of such minor significance and has no legal basis. The proposal for a dwelling, as described, on a site of 0.25 hectares in a rural area, is not a class of development for EIA and, therefore, cannot constitute sub-threshold development.

7.5. Appropriate Assessment

The site is approx. 2 km to the north of Ballyseedy Wood SAC (site code 002112). Having regard to the nature and scale of the proposed development, the distance from the said designated site no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that permission for the above described development be refused for the following reasons and considerations.

1. The site is within an area under strong urban influence as designated in the current Kerry County Development Plan 2015 – 2021 and where, in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005, it is policy to distinguish between urban-generated and rural-generated housing need. On the basis of the information on the application and appeal the Board is not satisfied that a rural generated housing need at this location has been identified. The proposed development, in the absence of any identified rural-generated 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, be contrary to the Ministerial Guidelines and be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing dwellings in the vicinity, it is considered that the proposed development would give rise to an excessive density of

development in a rural area lacking certain public services and community facilities, would exacerbate and consolidate a trend towards the establishment of a pattern of haphazard rural housing in an unzoned rural area and would lead to the erosion of the rural and landscape character of the area.

3. Having regard to the density of development served by individual effluent treatment systems in the vicinity, soil conditions on site and the watercourse along the northern site boundary, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, The proposed development would, therefore, be prejudicial to public health.

Pauline Fitzpatrick
Senior Planning Inspector

August, 2018