



An
Bord
Pleanála

Inspector's Report ABP 302566-18

Development	4 no. 2 storey dwellings, access road and services.
Location	Kilnabrack Upper, Glenbeigh, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/243
Applicants	V, O, A and J Keary
Type of Application	Outline permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Inland Fisheries Ireland
Observer(s)	None
Date of Site Inspection	22/01/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.6708 hectares, is within the boundary of Glenbeigh opposite the Glenbeigh Hotel and to the east of the village centre. It fronts onto the N70. The 50kph speed limit applies. It is bounded by detached dwellings to the west and a two storey stone building in commercial use to the east.

The site is roughly rectangular in shape with an existing access serving two dwellings set back from the road. The front portion of the site slopes up from the road on which the dwellings are proposed with the section to the rear (south) under forestry. A stream runs at an angle along the western portion of the site before being culverted under the road.

The eastern and western boundaries are delineated by hedgerows. Save for the area in front of site no.4 the roadside boundary is setback from the carriageway and is delineated by a low stone wall backed with planting. The said area between the wall and the road carriageway is currently being used for parking associated with the hotel opposite.

2.0 Proposed Development

The application was lodged with the planning authority on the 14/03/18 with further plans and details lodged 24/07/18 following a request for further information dated 01/05/18.

Outline permission is being sought for 4 no. 2 storey dwellings, 3 no. to the west of the existing access road and 1 no. to the east. Access arrangements are to be from the said existing access road. The existing roadside stone wall and associated trees are to be removed along the front of site no.4 and the boundary setback to provide for a new footpath.

Connection to the public sewer and water mains are proposed.

The applicants are the children of the landowner who also owns the Glenbeigh Hotel opposite.

An archaeological pre-testing report concludes that no in situ archaeological finds, features or deposits were recovered in any of the test trenches. No further archaeological input required.

3.0 Planning Authority Decision

3.1. Decision

Grant outline permission subject to 9 conditions including:

Condition 1: Front building line for each dwelling to be located 5 metres forward/north-west of the line indicated on the site layout map received 24/07/18.

Condition 4: No part of any proposed dwelling or other structure to be erected within 4.5 metres of the centre of any divisional boundary on either side of any of the proposed dwellings.

Condition 5: Dwellings to be of traditional design cognisant of designs within the village and are to have a level of uniformity.

Condition 6: Connection to public water supply and foul sewerage systems to be to the satisfaction of Irish Water.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report recommends further information on pre-archaeological testing and roadside boundary treatment. The 2nd report following further information notes the positive report from Irish Water. The size and topography of the site and layout of the proposed houses in relation to those existing as shown on the site layout map should not interfere with the residential amenities of dwellings in the area. Adequate sight distances are available. A grant of outline permission subject to conditions recommended.

3.2.2. Other Technical Reports

Estates unit in a report dated 09/04/18 details recommendations as to access road, footpath and boundary treatment. Roads section to advise.

County Archaeologist states that given the scale of the development pre-development testing should be carried out and a report submitted prior to any grant of permission. The 2nd report following further information notes the pre-archaeological testing. No further mitigation required.

Biodiversity Office recommends that no development should occur within the buffer to the small stream and no direct or indirect interference with the stream should occur.

3.3. Prescribed Bodies

Inland Fisheries Ireland in a report dated 11/04/18 states that the Glenbeigh public sewer is under capacity and additional increase to the system either organically or volumetrically will exacerbate the already inadequate effluent treatment afforded particularly during the summer months when peak loadings occur. This introduces the potential for polluting discharge to the Behy River. Further connections should not be permitted until the treatment facilities are upgraded or alternative treatment options are considered.

Irish Water has no objection subject to conditions.

Transport Infrastructure Ireland has no observations.

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 relate to adverse impact on amenities of adjoining property and urbanisation of the countryside.

4.0 Planning History

I am not aware of any previous application on the site.

5.0 Policy and Context

5.1. Development Plan

Killorglin Functional Area Local Area Plan 2010

The site is within an area zoned residential, the objective for which is to provide for new residential areas, to protect and improve existing residential areas and to provide facilities and amenities incidental to those residential areas.

Paragraph 1.4 Infrastructure - The village is currently served by a wastewater treatment plant. The plant is currently operating at capacity and a preliminary report has been prepared for the construction of 2,500pe waste water treatment plant. This current lack of capacity will act as a significant constraint on development within the period of this plan..... The proposed waste water system will become operational in the medium term. The village is served by a public water mains supply.

5.2. Natural Heritage Designations

The Castlemaine Harbour SAC and Castlemaine Harbour SPA are c.1.5 km to the north-west of the site.

Killarney National Park, Macgillicuddy's Reeks And Caragh River Catchment SAC is c.100 metres to the south.

5.3. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal by Inland Fisheries Ireland can be summarised as follows:

- The wastewater treatment facilities for Glenbeigh are overloaded particularly during the summer holiday period with discharge of poor quality effluent to the Behy River, a salmonid river, and ultimately to Castlemaine Harbour SAC (000343) and Castlemaine Harbour SPA (004029).
- Poor effluent conditions are confirmed from effluent analyses in 2017. Irish Water notification of incidents/reoccurrences ref. INCI008277 for Glenbeigh Licence (D0286-01) and more recently ref. INCI008277-REC8 (incident report attached) refer. The incidents note that the WWTP is not designed for seasonal loadings and has no Ammonia & OP removal.
- The unsatisfactory conditions will continue or deteriorate until the sewage treatment system is upgraded/replaced. This does not appear to be imminent.
- Any increase in loading should not be permitted as this is incompatible with the proper management and sustainable development of the Glenbeigh area and Behy River including Castlemaine Harbour.
- Development should be undertaken in a manner which can effectively protect surface waters from organic, bacteriological and nutrient enrichment. This requirement is of particular importance at this location due to its proximity of the nearby aquaculture development areas in Castlemaine Harbour and its other integral protected habitats and species.

6.2. Applicant Response

None.

6.3. Planning Authority Response

None

6.4. Observations

None

6.5. Section 131 Notice

Having regard to the potential impact on the Behy River and possible impact on Killarney Park, Macgillycuddy Reeks and Caragh River Catchment SAC and other Natura Sites in the area, certain prescribed bodies were invited to make a submission on the appeal.

One submission was received from the Department of Agriculture, Food and the Marine which states that if the proposed development involves the felling or removal of any trees a Felling Licence will be required.

This submission was circulated to the relevant parties to the appeal for comment. A response was received from Lonergan Consultancy on behalf of the applicants which can be summarised as follows:

- The proposal will require the removal of 6-7 large evergreen trees adjacent to the road. It is proposed to seek a felling licence.
- Although there is no dispute that Glenbeigh Village sewage treatment plant may require upgrading this is a matter for Kerry County Council.
- This issue was not raised with the applicants during the application process. Therefore it is assumed that the issue will be rectified in the short term
- A permission consequent to the grant of outline permission is required before any construction can take place. That would be a more suitable time for Inland Fisheries Ireland to appeal the proposal as the issues with the treatment plant may be rectified in the interim.
- If the defects are not rectified in the interim the applicants are willing to install a private waste water treatment plant to cater for the dwellings, thereby discharging treated effluent to the public sewer and thus not increasing the loading of untreated effluent to the treatment plant. The only practical location for such a treatment system to operate under gravity is in the northern portion of the site where the tree felling is proposed.

7.0 Assessment

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

1. Principle of development
2. Effluent Disposal
3. Appropriate Assessment

7.1. Principle of Development

The application site is located within the development boundary of Glenbeigh and is zoned for residential purposes in the current Killorglin Municipal Area Local Area Plan. The proposed development seeking outline permission for 4 no. dwellings is acceptable in principle.

7.2. Effluent Disposal

I consider that the substantive issue arising in the case relates to effluent disposal and connection to the Glenbeigh wastewater treatment plant which is located c.1km to the west of the appeal site. It discharges into the River Behy which then flows in a northerly direction into Castlemaine Harbour, a c.1.2km hydrologic distance. Castlemaine Harbour is designated as a SAC and SPA.

The issues arising with respect to the treatment plant date back to at least 2010 with specific reference made in the Killorglin Functional Area LAP to the fact that the plant is currently operating at capacity and that a preliminary report has been prepared for the construction of a 2,500pe waste water treatment plant. The plan also noted that the current lack of capacity would act as a significant constraint on development within the period of the plan.

As per the information available from epa.ie, including the Annual Environmental Report 2017 prepared by Irish Water (copy attached) the treatment plant has a design PE of 800 and provides for secondary treatment only. The final effluent from the primary discharge point recorded non-compliance with the Ortho P/MRG and Ammonia Emission Limit Values (ELVs) with 3 incidents recorded in 2017. A breach of the BOD and TSS ELVs were also recorded in 1 of the 7 samples taken. The Environmental Report states that the non-compliance is due to the requirement

for an upgrade of the treatment plant. The improvement works is a candidate for inclusion in the next investment plan.

Subsequent to the above document an EPA Site Visit Report dated 17/08/18 (copy attached) noted emission limit breaches for cBOD, COD, SS, Ortho-P and Ammonia for July 2018. The plant is stated to be significantly overloaded especially in the summer months. It is noted that a new site has been acquired for a new waste water treatment plant.

On the basis of the above detail it is noteworthy that Irish Water in its report to the planning authority during the assessment of the proposed development recorded no objection subject to standard conditions pertaining to connection.

On balance I submit that the evidence available to the Board clearly indicates that the existing system is overloaded with knock-on impacts in terms of the quality of the discharge to the River Behy and contravention of ELVs as set out in the relevant discharge licence. To allow for 4 no. connections to the system would exacerbate an already unsatisfactory situation, would be prejudicial to public health and would set an undesirable precedent for similar development. In this context I would bring to the Board's attention a current appeal before it for 8 holiday homes within the Tower Hotel complex to the west. Reference ABP 303242-18 refers. Inland Fisheries Ireland is the appellant. Whilst a new wastewater treatment system is proposed no detail is available as to when it is anticipated to become operational.

Contrary to the agent for the applicant's view and having regard to the provisions of Section 36 of the Planning and Development Act 2000, as amended, I consider that the assessment of suitability of effluent disposal arrangements is an appropriate consideration at this outline permission application stage. A proposal must be assessed in the context of the prevailing conditions and policy context. As noted above there is no detail available to suggest that the new effluent treatment system would be in place within three years by which time an application for approval consequent of an outline permission, were it to be granted, would be required.

I also note the agent for the applicants' proposal that should the deficiencies in the sewage treatment system not be rectified in the intervening period they are willing to install a waste water treatment plant on the site to treat effluent prior to discharge to the public sewer. No further details are provided. I consider that such a proposal

would need to be supported by detail at this outline application stage to allow for its consideration.

I therefore recommend refusal on ground of public health and prematurity with reference to the deficiencies in the wastewater treatment plant.

7.3. **Appropriate Assessment**

Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) is c.100 metres to the south of the appeal site. The qualifying interests include aquatic species and habitats, blanket bogs, heaths, woodlands, Kerry Slug, Lesser Horseshoe Bat, Killarney Fern and Marsh Fritillary. Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the said habitats and species. The appeal site is downslope of the SAC with an area of mature forestry inbetween. Likely significant effects can be reasonably ruled out.

Castlemaine Harbour SAC (site code 000343) and Castlemaine Harbour SPA (004029) are c.1.5 km to the north-west of the site. The qualifying interests of the former include aquatic habitats and species. The qualifying interests of the latter include wetland and waterbirds. Detailed conservation objectives have been prepared for both sites, the overall aim being to maintain or restore the favourable conservation status of the said habitats and species.

The proposal entails connection to the Glenbeigh wastewater treatment plant which discharges to the Behy River which then flows into Castlemaine Harbour SAC and SPA, a c. 1.2km hydrologic distance.

As noted above the existing wastewater treatment plant is overloaded with breaches in the Emission Limit Values as set out in its discharge licence noted in 2017 and 2018. The proposed development, in proposing to connect into the said system, would be likely to exacerbate the prevailing conditions. The potential indirect effects on water quality on which a number of the qualifying interests in the designated sites are reliant cannot be ruled out. I also note the current proposal for a further 8 dwellings which is subject of a current appeal under ref ABP 303242-18.

Thus on the basis of the information provided I am not satisfied that the proposed development would not be likely to have a significant effect on Castlemaine Harbour

SAC and SPA and should, therefore, be subject to an Appropriate Assessment. Refusal on this basis is recommended.

8.0 Recommendation

Having regard to the foregoing I recommend that outline permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. It is considered that the proposed development would be premature by reference to the existing deficiencies in the Glenbeigh wastewater treatment plant to which connection is proposed and the period within which this constraint may reasonably be expected to cease. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
2. 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 of European Sites 000343 and 004029, or any other European site, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting outline permission.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2019