



An  
Bord  
Pleanála

## Inspector's Report ABP 302604-18

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<b>Development</b>	50 houses and associated site works.
<b>Location</b>	The Parsonage, Bell Height, Kenmare, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/1242
<b>Applicants</b>	Dolent Properties
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	1. 3 <sup>rd</sup> Party v. Grant 2. 1 <sup>st</sup> Party v. Conditions
<b>Appellants</b>	1. Sean Daly 2. Thomas Randles 3. Dolent Properties
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22/01/19
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site which has a stated area of 2.77 hectares is to the south of Kenmare town centre accessed from Bantry Road/Bell Height (N71) within the town's 50 kph speed limit. Pier Road is c. 100 metres to the south. Bantry Road is relatively narrow with on-street parking precluded by way of double yellow lines along the site frontage.

There is a vacant, detached two storey dwelling to the roadside which is served by a long rear garden which is now overgrown. The site widens out to encompass a field to the rear (west) which is currently in agricultural use. It is relatively level. It is bounded by mature trees and detached two storey properties to the south which are accessed from Pier Road. The western and northern boundaries are delineated by stone walls and hedgerows. To the immediate south of the narrow roadside portion of the site is a small scheme of 2 storey apartments with the shared boundary delineated by a c.3.5 metre high stone wall. To the immediate north is a single storey dwelling, the shared boundary of which is delineated by a stone wall and post and wire fence. There is a two storey dwelling to the north of same followed by a small scheme of two storey dwellings (Ard na Greine) which bound the site to the north-east.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 13/12/17 with further plans and details submitted 31/05/18 following a request for further information dated 14/02/18. Revised public notices were submitted 19/06/18 and 28/06/18.

Clarification of further information was submitted 30/07/18 following a request for same dated 24/07/18.

The proposal entails:-

- Demolition of existing two storey dwelling and associated outbuilding
- Construction 50 no. dwelling units comprising
  - 7 no. detached 4 bedroom units
  - 40 no. semi-detached 3 bedroom units in three designs
  - 3 no. terraced three bedroom units

- 3 open space areas comprising
  - 1<sup>st</sup> along southern boundary – 2610 sq.m.
  - 2<sup>nd</sup> along western boundary – 1200 sq.m.
  - 3<sup>rd</sup> to rear of dwelling adjoining to the east – 460 sq.m.
- The main access road is to be 6.1 metres in width reducing to 5.5 metres within the scheme.
- Sight distances of 70 metres to be achieved at proposed access.
- Stormwater attenuation tank proposed.

The application is accompanied by

- Planning Support Statement
- Infrastructure Report
- Ecological Impact Assessment
- Archaeological Testing Report including Photographic Survey of dwelling to be demolished.
- Landownership details
- Road Safety Audit
- Confirmation of Feasibility from Irish Water re connection to WWTP.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission for the above described development subject to 24 conditions including:

Condition 5: No development to commence until developer has obtained a connection agreement from Irish Water for provision of water and sewerage services. No connection to the public foul sewerage system shall be permitted until the necessary upgrade works to the WWTP are completed.

Condition 10: Adequate sight distances to be provided within the scheme and onto the N71 in accordance with drawings and details received 30/05/18. All recommendations of the Road Safety Audit to be implemented in full.

Condition 24: No dwelling/part of dwelling to be used for overnight commercial guest accommodation without prior grant of permission.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The 1<sup>st</sup> Planner's report dated 14/02/18 recommends further information arising from the reports as summarised below in addition to works to the stone wall along the eastern and northern boundary, photographic evidence of proposed front and rear boundary treatments, right of way to Pier Road, details of site ownership, internal layout alterations relating to distance between dwellings, parking spaces, public open space and turning areas and submission of a detailed numbering system.

The 2<sup>nd</sup> Planner's report dated 24/08/18 following clarification of FI notes that the visual impact from the N71 would be minimal. Having regard to the topography and existing screening it will not be visible from Pier Road to the south. The dwelling to be demolished is not a protected structure and is not located in an ACA. Permission has previously been granted for its demolition. The lands would be land locked without the demolition. Concerns in terms of amenities of neighbouring properties can be addressed by way of condition. The report includes AA and EIA screening. A grant of permission subject to conditions recommended.

### **3.2.2. Other Technical Reports**

Housing Estates Unit in a report dated 08/01/18 requires further detail including details on boundary treatments, access road and footpaths, sight lines onto public road, public lighting, open space. A 2<sup>nd</sup> report dated 28/06/18 following FI recommends further detail on same.

Executive Planner (Conservation) in a memo dated 09/01/18 considers that the demolition of the dwelling to create a vehicular access to the rear would further compound the issues identified in the Kenmare LAP with respect to new development that detracts from the compact urban form of the town and further loss

of the historical built fabric. She does not agree with the demolition. Should permission be granted a photographic survey of the structure to be completed. The 2<sup>nd</sup> memo dated 18/06/18 following FI has no further observations.

County Archaeologist in a memo dated 09/01/18 notes there are no recorded monuments on or near the site. However, given the scale of the proposal pre-development archaeological testing should be carried out prior to any grant of permission. The 2<sup>nd</sup> memo dated 06/06/18 following FI recommends that all ground disturbance and topsoil stripping be archaeologically monitored and a report submitted on conclusion.

Biodiversity Officer in a report dated 23/01/18 recommends an Ecological Impact Assessment, to include a bat survey, be submitted. A 2<sup>nd</sup> memo dated 06/06/18 following FI recommends that mature vegetation should be retained where possible.

Roads Department in a report dated 14/02/18 recommends further information seeking Road Safety Audit, sight distances at site entrance and storm water design details. The 2<sup>nd</sup> report dated 24/06/18 following FI recommends clarification of further information requiring a road safety audit as requested and applicant to consult with Irish Water regarding connection to the WWTP.

### **3.3. Prescribed Bodies**

Inland Fisheries Ireland in an email dated 09/01/18 notes that the WWTP is overloaded during the peak tourist season months. Therefore any additions to the system will contribute to overload and potential for poor quality effluent discharges to the Finnihy river estuary thereby introducing a contamination risk to the shellfish protected areas of Kenmare Bay. It is considered that further connection to the existing system is unsustainable and the proposal would appear to be premature. The 2<sup>nd</sup> email dated 25/06/18 following FI notes that it does not provide any additional information on the capabilities of the WWTP. Its objection to the development remains.

Irish Water in a Planning Permission Observation Report dated 11/01/18 recommends a refusal of permission on the basis that the WWTP cannot accommodate the additional load. A further report dated 12/01/18 recommends that the applicant be advised that there are currently constraints on the WWTP which

would hinder the connection of the development. An upgrade of the plant is planned. Thus the connection may be accommodated once the upgrade has been carried out. The applicant is advised that the progression of the upgrade is subject to the constraints of the Irish Water Capital Investment Programme and the successful completion of all relevant statutory approvals.

Correspondence by Irish Water to the applicant dated 16/01/18 states that in order to accommodate the proposed WWTP connection, upgrade works are required. It is a project on its current investment plan. The upgrade is scheduled to be completed by early 2023 (this may be subject to change) and the proposed connection could be completed as soon as practicable after this date. A connection agreement can be applied for.

Irish Water in an email dated 24/08/18 notes that a consultant has been appointed to undertake the assessment of the existing WWTP and prepare a feasibility design report for the upgrade. It is envisaged that the upgrade will be completed within the life of the planning permission. It has no objection subject to the caveat that the upgrade must be completed before connection is feasible.

Transport Infrastructure Ireland in a report dated 15/01/18 considers that insufficient data has not been submitted to demonstrate that the proposal will not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity. The development would be at variance with national policy in relation to control of frontage development on national roads. A Road Safety Audit is recommended. The 2<sup>nd</sup> report dated 28/06/18 following FI states that its position remains the same.

An Taisce in a letter dated 30/01/18 recommends that the buildings should be well screened and should not have any negative impact on the views towards the pier from the opposite shore of the river.

#### **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

- Access and traffic

- Visual impact
- Privacy of adjoining property
- Stormwater treatment
- Right of way to Pier Road
- No capacity in WWTP
- Land ownership
- Archaeology
- Ecology
- Boundary treatment

## 4.0 Planning History

05/2397 – permission granted for 60 dwellings and creche on the site. An extension of duration of permission was granted under ref. 05/92397.

## 5.0 Policy Context

### 5.1. Development Plan

Kenmare Functional Area Local Area Plan 2010

The site is zoned Existing and Proposed Residential.

Section 3.6.2 Future Residential Developments

It is not intended to prescribe density standards...Rather the appropriate densities for any future housing developments will be considered by integrating with the overall image of the town and surrounding developments. In general housing densities will be higher closer to the town centre and lower towards the edge of town.

Objectives H-1 to H-13 relate to residential development

H-6 - Ensure that residential densities reflect high quality design integrating with the overall image of the town and surrounding developments. Higher densities will be

considered in the town centre or within close proximity to the town centre. Lower densities will be considered at the edge of town.

H-11- Require that planning applications for housing developments shall comply with the development management standards and urban design guidance as contained in Chapter 13 of the Kerry County Development Plan 2009-2015 and shall also comply with all relevant guidelines issued by the Department of Environment, Heritage and Local Government.

## **5.2. Natural Heritage Designations**

## **5.3. Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development within the development boundary of Kenmare on residentially zoned lands, 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**

#### **6.1.1. 1<sup>st</sup> Party Appeal**

The submission by Meitheal Design Partners on behalf of the applicant is against condition 5 attached to the planning authority's notification of decision to grant permission relating to connection to the WWTP. The condition states that no development is to commence until the developer has obtained a connection agreement from Irish Water and no connection to the public foul sewerage system permitted until the necessary upgrade works to increase the treatment plant capacity are completed.

- A confirmation of feasibility letter from Irish Water accompanies the appeal which confirms that the proposed connection can be facilitated subject to a valid connection agreement being put in place.



- It is considered that the wording about no connection until the necessary upgrade works have been completed is onerously restrictive and outside the authority of the planning authority. It may unintentionally impinge compliance post construction despite all conditions of a valid connection agreement being in place.
- Any relevant additional conditions in relation to water and sewerage supply would be included in the connection agreement.
- It is recommended that the section of the condition requiring no connection until the necessary upgrade works are completed be omitted.

### 6.1.2. 3rd Party Appeals

#### **Sean Daly**

The submission can be summarised as follows:

- It is physically not possible to obtain the required set back and sightlines at the junction with the N71. The recommendations in the Road Safety Audit do not adequately address the shortcomings.
- The existing WWTP does not have capacity to accommodate the proposal. In view of the timescale anticipated for the realisation of the upgrade, which is noted to be subject to change, the proposal is premature.
- There is no lack of housing supply in Kenmare.
- The developers should have had a pre-planning meeting with the planning authority.

#### **Thomas Randles**

The submission can be summarised as follows:

- The N71 is heavily trafficked. The development has the potential to generate c. 240 car movements per day.
- The required setback for measurement of sightlines for a development of this size would be 3 metres.

- The sightlines cannot be achieved without the removal of the wall to the south of the entrance. This would require the agreement of the landowner. The drawing submitted is incorrect.
- The width of the entrance is stated to be 19.585mm. When scaled and measured on site it is less than 17 metres.
- There are capacity issues with the town's WWTP. The proposal is premature pending its improvement.
- The landscaping detail provided is deficient.
- The application does not address the important ecological setting and the proximity of Natura 2000 sites.
- Impact on biodiversity has not been addressed.
- The density is too low.

## 6.2. Applicant Response

None

## 6.3. Planning Authority Response

None

## 6.4. Observations

None

## 6.5. Further Responses

The appeals were circulated for comment.

A submission was received from Sean Daly (accompanied by photographs and supporting detail) which, in addition to reiterating a number of points made in his appeal, notes the following:

- The WWTP does not have capacity to accommodate the proposal. The planning authority by way of condition 5 was endeavouring to control the situation. The proposal is premature.
- It is quite possible that the permission could expire prior to the completion of the upgrade works.
- An incident occurred during the summer 2018 following which the Finnihy River and Kenmare Bay were polluted.
- The N71 at this point is a narrow and busy road with traffic tail backs during peak summer months. The Adult Education centre is across the road with entrance to Rennagross Town Park and the roadway to the pier in close proximity. The proposed entrance would give rise to traffic hazard particularly to children and tourists who use the facilities.
- The Road Safety Audit could not satisfy the requirements of Transport Infrastructure Ireland.

#### 6.6. **Section 131 Notice**

Certain prescribed bodies were invited to make a submission on the appeals on the basis that the Board is of the opinion that the proposed development may have an impact on a SAC and SPA.

No responses received.

## 7.0 Assessment

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

- Principle of Development and Density
- Effluent Disposal
- Access and Traffic
- Other Issues

### 7.1. Principle of Development and Density

The site which is c. 300 to the south of Henry Street, is within the development boundary of Kenmare and is zoned for residential purposes. Permission had previously been granted on the site for 60 dwellings and a crèche under ref. 05/2397 which was subsequently extended under ref. 05/02397. This has now expired. The proposed development would be in accordance with the zoning objectives for the area and is acceptable in principle.

The proposal entails the demolition of the two storey dwelling along the road frontage to facilitate the proposed access to the main body of the site. The two storey three bay dwelling which is vacant and in a deteriorating condition, is not a protected structure and is not within a designated Architectural Conservation Area. Whilst having an innate quality I consider that the demolition of the structure would not have an adverse impact on the streetscape at this location. I base this view on the mix of modern development along this section of road frontage, including the small two storey apartment scheme to the south and modern detached dwellings to the north and the absence of a defined building line.

The proposal for 50 dwelling units on a 2.77 hectare site equates to a density of 18 units per hectare. Should the narrow section of the site along which the access road is to be developed be omitted (approx. 0.19 hectares) a density of 19 units per hectare is calculated.

Since the previous permission on the site which provided for 60 units per hectare (density of c.22 units per hectare) the policy context has changed in the interim in terms of both the adoption of the Kenmare Functional Area LAP 2010 and the

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued in 2009 and to which regard must be had.

Whilst I note that the Kenmare Functional Area LAP 2010 does not prescribe density standards it requires residential densities to reflect high quality design integrating with the overall image of the town and surrounding developments (objective H-6). Higher densities will be considered in the town centre or within close proximity to the town centre. Lower densities will be considered at the edge of town.

As per objective H-11 of the plan housing developments are required to comply with all relevant guidelines issued by the Department of Environment, Heritage and Local Government. In that context I submit that Kenmare with a population of in the region of 2000 would be considered to constitute as small town. I am also of the view that the site has the characteristics of an edge of centre site being c.300 metres from High Street. In such a location section 6.11 of the guidelines recommends densities of in the range of 20-35 dwellings per hectare providing for a wide variety of housing types.

Having regard to the developable area of the site, whilst cognisant of the need to protect the amenities of property in the vicinity, I consider that the proposed density to be misplaced and not in keeping with the guidelines. The homogeneity in the house type to be provided (3 and 4 bedroom units) also runs counter to the above guidelines. On this basis I consider the proposal to be an inefficient and unsustainable use of scarce serviceable land in an area zoned for residential development in such proximity to the town centre.

The proposal would, therefore, be contrary to the proper planning and sustainable development of the area and I recommend that permission be refused for this reason.

## **7.2. Effluent Disposal**

The issues of the adequacy of the Kenmare waste water treatment plan dates back to 2010 with the acknowledgement in the Kenmare Functional Area LAP that the plant was at capacity with objective WWW-1 seeking to facilitate the provision and upgrading of the infrastructure to ensure the sustainable development and future growth of the town. The said waste water treatment plant is located adjacent to the

Finnihy River to the west of the town with its discharge point to the river adjacent. The watercourse forms part of the Kenmare River SAC.

The relevant reports on file from Irish Water acknowledge that the system does not have the capacity to accommodate the proposed development but that the applicant should engage with it in terms of its pre-connection enquiry process. The upgrade of the plant forms part of its current Capital Investment Programme, with a feasibility study due to be completed in 2018. The upgrade is anticipated to be completed by early 2023, although it is noted that this may be subject to change.

I would also bring to the Board's attention the EPA's Site Visit report dated 24/07/18 (copy attached) which noted that the plant is significantly overloaded with the plant operating under significant pressure on the day of the visit. The report notes that the upgrade of the plant is urgently needed and that Irish Water should ensure that the upgrade is given greater urgency and priority. Reference is made in the report to two recorded incidences at the plant.

The planning authority by way of condition 5 attempts to circumvent the issue of lack of capacity by precluding the commencement of any development until a connection agreement has been secured and no connection until the necessary upgrade works are completed. The applicant is appealing this condition on the grounds that it has a confirmation of feasibility letter from Irish Water which states that the proposed connection can be facilitated subject to a valid connection agreement being put in place. It is further considered that the preclusion of connection until the necessary upgrade works have been completed is onerously restrictive and outside the authority of the planning authority.

I consider that the adequacy or otherwise of the waste water treatment plant is a relevant planning consideration in the assessment of the case notwithstanding the remit of Irish Water. In this instance it is quite clear that the town's system is not capable of accommodating the development and, whilst plans for its upgrade are in train, no application has yet been made for same. As noted by Irish Water itself the anticipated completion date of early 2023 is subject to change. In view of the time period anticipated for resolution I consider that the proposal is premature and that a condition comparable to that attached by the planning authority is not inappropriate. Such a condition may be appropriate where the upgrade proposals have secured the

relevant approvals and is imminent in terms of development. This is not the case in this instance. I therefore recommend refusal on this basis.

### 7.3. Access and Traffic

As noted above the two storey dwelling onto Bantry Road/Bell Height (N71) is to be demolished to facilitate access to the site. The point of access is within the 50km/hr speed limit of the town. The road is relatively narrow with a footpath along the road frontage.

As per the NRA Road Geometry Handbook and Table 7/1 therein sight distances of 70 metres are required where the 50pkm speed limit applies. The guidelines recommend the measurement of the distance available from a 9 metre setback with a relaxation to 4.5 metres allowed for lightly trafficked simple junction. In exceptionally difficult circumstances this can be further reduced to 2.4 metres back from the nearer edge of the major road running carriageway.

The sight distances at the proposed access were calculated using the latter 2.4 metre set back. Within the town's speed limit I consider this to be acceptable and would be in accordance with the provisions of DMURS as set out in Section 4.4.5. Whilst the appellants contend that the sight distances cannot be achieved without intervention on 3<sup>rd</sup> party lands, notably the removal of the stone wall to the south, the Road Safety Audit prepared recommends the removal of all walls and pillars along the site boundary to ensure visibility splays are not affected. It also recommends a raised treatment at the entrance to ensure that visibility to the north can be provided across the adjoining property boundary. The raised table will also serve to facilitate pedestrians crossing the new junction. On balance I consider that sufficient detail has been provided to support the claim that adequate sight distances can be provided.

The additional vehicular movements associated with a housing scheme of 50 dwellings within the town's speed limit is considered acceptable and whilst I note the concerns as to traffic congestion in the town, especially during the summer months arising from tourist related traffic, this cannot be seen as a material consideration as to warrant a refusal of permission. Traffic management within the town is the remit of the Local Authority.

#### 7.4. Other Issues

The amenities of adjoining property, notably the dwellings to the east with frontage onto Bantry Road/Bell Height and the detached dwellings to the south, can be secured by suitable boundary treatment and landscaping.

The application is accompanied by an Ecological Impact Assessment including a bat survey. There are no bat roosts on the site. It is concluded that the present agricultural use of the site is largely unfavourable for these animals and that the proposed development is expected to have a negligible impact on same.

##### *Appropriate Assessment*

The site is located approx. c.300 metres to the south of Finnihy River which forms part of the Kenmare River SAC. The qualifying interests include coastal habitats, otter, narrow mouthed Whorl Snail, and Lesser horseshoe bat. 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 proposal entails an urban residential scheme connecting to existing public services. As noted above the existing WWTP serving the town is overloaded and does not have the capacity to accommodate the proposed development. It discharges directly to the River Finnihy.

In view of the current situation and were the development to be considered favourably at this stage I submit that the potential for indirect effects of the proposed development on water quality in the SAC arising from connection into such an overloaded system cannot be ruled out. A number of qualifying interests in the designated site are reliant on good water quality. On this basis, therefore, I consider that an NIS would be required.

Notwithstanding, and as detailed above, I consider that the proposal is premature pending the necessary upgrade of the system.

#### 8.0 Recommendation

Having regard to the foregoing I recommend that 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 capacity deficiencies in the Kenmare waste water treatment plant to which connection is proposed and the period within which this constraint may reasonably be expected to cease. In the absence of improved wastewater treatment capacity the proposed development would be prejudicial to public health and would therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the residential zoning objective for the site, the current provisions of the Kenmare Functional Area Local Area Plan relating to compliance with relevant guidelines as set out in objective H-11 and the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) issued to planning authorities under section 28 of the Planning and Development Act, 2000, as amended, it is considered that the proposed development would not be developed at a sufficiently high density to provide for acceptable efficiency in land usage given the proximity of the site to Kenmare town centre and established social and community facilities in the vicinity and would not conform to the minimum densities of 20-35 units per hectare on edge of centre sites in small towns and villages recommended in the Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**February, 2019**