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Bord  
Pleanála

## Inspector's Report ABP 302705-18

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<b>Development</b>	Demolish derelict house, decommission septic tank and construct house.
<b>Location</b>	Glashabeg, Ballydavid, Dingle, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/459
<b>Applicant</b>	Vincent Gorman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellant</b>	Mary Wilson O'Farrell
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23/01/19
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site which has an approx. area of 0.23 hectares, is in the townland of Glashabeg approx. 800 metres to the south of Feohanagh, c.950 metres to the north of Boherboy and c.10 km to the north-west of Dingle. It is accessed from a track off the R549 which serves four dwellings, the subject site and an unoccupied dwelling and farm buildings, all of which have panoramic views of the coastline.

The site which is rectangular in shape, is directly to the rear and south of a dormer dwelling (appellant's property). The ruinous dwelling on the site is at a right angle to the said property with the gable wall supporting the appellant's shed. The remainder of the boundary is delineated by hedging. The appeal site slopes up from north to south and straddles two fields with a stone wall delineating the field boundary. The western site boundary is delineated by an earthen bank. The site boundary is setback from a stream to the east. A derelict dwelling and farm buildings are located to the other side of the stream. The site is served by an existing gated entrance.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 16/05/18 with further plans and details received 31/07/18 following a request for further information dated 09/07/18 with revised public notices received 16/08/18. The development comprises:

- Demolition of existing dwelling and decommissioning of existing septic tank
- Construction of a single storey dwelling with an east-west orientation with a stated floor area of 123.68 sq.m. It is to be setback 21.822 metres from the rear wall of the dwelling to the north.
- The dwelling is to be served by a mechanical aeration unit with pumped discharge to a polishing filter

A 1 metre high block wall is proposed along the northern boundary to be backed with planting.

As per the site characterisation form the depth to the water table is 1.5 metres. A T value of 14.72 was recorded. A P value of 34.14 was recorded.

The application is accompanied by:

- Solicitor's letter on behalf of the adjoining landowner (appellant) stipulating certain requirements to ensure her support of the application.
- Report on the structural condition of the derelict dwelling.
- Letter from owner of dwelling to east stating no objection to the proposal and consent to form the entrance way.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Grant subject to 16 conditions. Of note:

Condition 3; Occupancy requirements.

Condition 4(b): Dwelling not to be used as a holiday home or 2<sup>nd</sup> home.

Condition 6: Finished floor level to be in accordance with section drawing received 31/07/18.

Condition 7: Notwithstanding exempted development provisions no development to take place within curtilage without prior grant of permission.

Condition 9: Dwelling to be provided with a home composting unit.

Condition 14: Vehicular access to be located and constructed as shown on site layout plan received 31/07/18.

Condition 16: Site landscaping including retention of existing boundary screening to north and provision of new sod and stone fence along same, to be suitably planted.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The 1<sup>st</sup> Planner's report notes that the proposed dwelling would be higher than the existing ruins and would, therefore, be visible on the landscape. The reduction in the

height and bulk from that previously refused permission would significantly reduce the visual impact and may be adequate to address the previous reason for refusal. The proposal would impact significantly on the adjoining property to the north-east. The proposed vehicular access would impinge on the development potential and value of this property. It is also located to the rear of another dwelling. No details of the wall proposed along the shared boundary submitted. A request for further information is recommended seeking section drawings, details on boundary wall, details on right of way and access.

The 2<sup>nd</sup> Planner's report following further information notes that whilst the floor level of the proposed dwelling would be 0.82 metres higher than the floor level of the adjoining dwelling the roof ridge level would be 0.93 metres lower. It is considered that the proposed dwelling would not be unduly prominent and would integrate into the landscape. There is a lack of consensus between the parties as to the proposed boundary treatment. A condition requiring the retention of the hedge forming the boundary and construction of a 1.5 metre sod and stone fence, to be suitably planted recommended. This would provide effective screening and security between the properties and would integrate into this sensitive landscape. A grant of permission subject to conditions recommended.

### 3.2.2. Other Technical Reports

County Archaeologist notes no recorded monuments in or the in vicinity of the site. No mitigation required.

Biodiversity Officer considers that due to the nature and scale of the development significant effects on Dingle SPA are unlikely.

Site Assessment Unit considers the site to be suitable for an effluent treatment system subject to conditions.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

Representation made in support of the application is on file for the Board's information

An observation from the adjoining landowner requests the planning authority to protect her private amenity and that the grounds for the previous refusal have been addressed. A further objection was submitted for reasons comparable to those set out in the 3<sup>rd</sup> Party appeal which is summarised in section 6 below.

### 4.0 **Planning History**

17/788 – permission refused for a similar development to that subject of this appeal for two reasons:

1. Disorderly backland development which would seriously injure the amenities of property in the vicinity.
2. The development would seriously injure the amenities of the area by reason of obtrusiveness and interference with the character of the landscape.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

Kerry County Development Plan, 2015

The site is within an area designated as Rural Secondary Special Amenity

##### 3.3.2.2 Secondary Special Amenity

Areas of Secondary Special Amenity constitute sensitive landscapes which can accommodate a limited level of development. The level of development will depend on the degree to which it can be integrated into the landscape. Residential development in these areas shall be regulated in accordance with the following:

*The following provisions shall apply:-*

- Individual residential home units shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character of the landscape or natural environment.

- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is therefore on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.
- Any proposal will be subject to the Development Management requirements set out in this Plan in relation to design, site size, drainage etc.

In such areas the following requirements to be met

Sons and Daughters of the traditional landowner, or a favoured niece or nephew, the land having been in the ownership of the family for in excess of 10 years while being the location of the principal family residence.

or

The applicant shall demonstrate a genuine rural employment need.

or

The applicant's family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality.

Section 3.3.5 - Renovation of Existing and Vacant Buildings situated in Rural Areas.

Replacement of an existing dwelling house will be considered where the renovation or restoration of the building is not feasible for structural reasons. The Planning Authority will require a Structural Engineer's Report to support this position.

Objective ZL-1 - Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

## 5.2. **Natural Heritage Designations**

The Dingle Peninsula SPA (site code 004153) bounds the site to the west.

## 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 appellant owns the property to the north of the appeal site. The grounds of appeal, which are accompanied by supporting documentation, can be summarised as follows:

- Permission to build a similar house was refused under ref. 17/788. The current proposal, whilst somewhat reduced, remains unchanged in all other aspects. The environmental and visual impact concerns as detailed in the previous refusal remain the same.
- The dwelling would seriously detract from the privacy and amenity of her dwelling by reasons of overlooking, overshadowing and visual obtrusiveness. Condition 16 stipulating boundary treatment is insufficient.
- The proposal constitutes backland development.
- She requested the planning authority that should permission be granted that the plans for the house and ancillary works be 'flipped' to ensure maximum distance from her dwelling.
- The septic tank on the appeal site originally served her dwelling. It was never connected to any dwelling on the site. It is believed that the septic tank and associated right of passage remains with her property. She does not consent to its decommissioning unless a greater separation between the two houses can be achieved and greater privacy provisions guaranteed.
- Agreement regarding the boundary between the properties is contentious and is unresolved. The maps submitted to the planning authority do not match the legal boundaries.
- Her shed shares a gable wall with the derelict dwelling to be demolished. No agreement has been secured to demolish the wall.
- It is queried whether the application adhered to proper procedure.

## 6.2. Applicant Response

The submission by Sean Lucy & Associates Ltd. on behalf of the applicant can be summarised as follows:

- The applicant is from Glashabeg and grew up in the family home on the site. He has a local need.
- No concerns are raised of the applicant's bona fides in seeking permission on the site, the provision of a wastewater treatment system or traffic safety.
- At the time of the lodgement of the application the parties had reached agreement on issues relating to access, boundary and dwelling design.
- The site represents the least exposed land in the applicant's ownership. The reduction in ridge height and scale address the previous reason for refusal.
- The dwelling has been located so as to form a cluster with existing property to reduce the visual impact on the sensitive landscape. Such clustering is not out of character with the area.
- The dwelling is at a greater remove from the appellant's dwelling from that previously refused permission. The finished floor level is some 2 metres lower than ground level at the southern end of the site. In its current location it would be less obtrusive.
- The dwelling would be 21.8 metres from the appellant's property.
- The only windows facing the appellant's property are located within a hallway and an ensuite. There will be no issues of overlooking or loss of privacy.
- The applicant is willing to accept conditions as they relate to setback from the shared boundaries, shared boundary treatments and orientation.
- A 3 metre wall would not be appropriate in such a sensitive landscape. The planning authority's requirements in terms of the shared boundary are considered the most appropriate.
- The septic tank on site did serve the appellant's dwelling prior to its sale. Before that it served the outside toilet associated with the derelict dwelling on the appeal site prior to the applicant's father building a new family home (now



the appellant's property). It is unlikely that the folios agreed upon at the time of sale would incorporate a right of passage to maintain a septic tank to which that dwelling is no longer connected

- Its location would offer a level of security to the appellant's holiday home.
- The issue of the boundary was settled by the courts and is no longer a credible issue as it relates to the planning application. The applicant has sufficient legal interest in the site to make the application
- The applicant does not intend to demolish the gable end of the dwelling which supports the appellant's shed.

### 6.3. **Planning Authority Response**

None

### 6.4. **Observations**

None

## 7.0 **Assessment**

At the outset I note that the proposal subject of the appeal is before the Board for its consideration de novo.

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

- Compliance with Settlement Location Policy
- Amenities of Adjoining Property and Visual Impact
- Effluent Disposal
- Other Issues

### 7.1. **Compliance with Settlement Location Policy**

The site is within an area of Secondary Special Amenity. As per the current County Development Plan such areas constitute sensitive landscapes which can accommodate a limited level of development. The level of development will depend

on the degree to which it can be integrated into the landscape. In view of the scenic amenities of the area and the panoramic views of the coast available this designation is considered reasonable. The prevalence of one off housing in the general area is noted including that in the immediate vicinity of the appeal site.

In order to protect the amenities of the area from such development pressure applicants are required to meet certain criteria as detailed in Table 3.7 of development plan. It is noteworthy that no details of the applicant's connection to the area are detailed in either the previous application on the site under ref. 17/788 or in the current application. The information available to the Board is that as provided in the response to the grounds of appeal. From same I note that the site constitutes the original family home in which he lived. Until recently he operated a business in the vicinity and resided therein. The application arises due to personal circumstances and the need to seek alternative accommodation.

I note that the bona fides of the applicant's application in this regard has not been contested by either the appellant or the planning authority.

I would suggest that a high bar needs to be set in terms of the detail to be submitted with an application to support the claim of housing need in this sensitive area. I do not believe this has been done in this instance. However, on balance, and having regard to the information provided in support of the appeal, I consider that sufficient detail is available at this juncture setting out the applicant's case. Notwithstanding, and as noted in Section 3.3.2.2 of the current County Development Plan, the acceptability of the proposal in terms of settlement policy is predicated on other planning and environmental considerations being satisfied.

## **7.2. Amenities of Adjoining Property and Visual Impact**

As noted previously this constitutes the second application for a dwelling on the site. The first was refused permission for two reasons relating to disorderly backland development which would seriously injure the amenities of property in the vicinity and visual obtrusiveness.

The appellant's dormer dwelling is to the north of the site. It has a large front garden area availing of the views to the north-west with a small rear garden area in which there are two outbuildings. It is setback c.12 metres from the common boundary.

The current proposal entails the demolition of a ruinous dwelling on the site and its replacement with a single storey dwelling with an east-west orientation. Due to the site levels it is to have a finished floor level which is 0.82 metres higher than the appellant's property but, by reason of the house design, will have a lower ridge height.

The dwelling is to be setback 9.203 metres from the shared boundary with a 21.822 metre setback from the rear wall of the appellant's property. By reason of the orientation windows serving the hallway and an ensuite, only, are in the elevation facing the appellant's property. As such overlooking would not be a material concern. A condition requiring the installation of opaque glazing could be further considered in the said window openings.

In terms of boundary treatment, I would concur with the requirements of the planning authority as set out in condition 16 that the existing hedge be retained and augmented with a sod and stone fence to be further planted as being the most suitable for this location. A block wall of 3 metres would be entirely inappropriate.

The main living spaces avail of window openings in the east and western elevations. Certainly, the layout would have a material impact on the property immediately to the east were it to be considered for reuse although I note a letter of no objection from the relevant landowner accompanies the further information submission.

However, I do not consider that the issue of backland development which constituted a material concern in the planning authority's decision on the previous application, has been addressed. From the details provided in response to the appeal, the applicant's and appellant's sites were originally in single ownership and that the dwelling now occupied by the appellant, was constructed by the applicant's father. I would therefore submit that the layout in terms of the proximity of the structures is somewhat of an artificial construct, and although I fully accept that the clustering of buildings is a characteristic in this coastal landscape, this cannot be at the expense of orderly development.

I also consider that the issue of visual obtrusiveness has not been resolved. Whilst the appellant's dwelling would screen the dwelling when viewed from straight on along the regional road, unobstructed views of the dwelling would be available when travelling in both directions along the road. The proposal cannot be seen to accord

with the development plan requirements for such rural secondary amenity areas which seek to ensure that development does not have an adverse impact on the character of the landscape or to be unduly obtrusive.

Overall, it is my opinion that the proposal 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. Invariably to allow for such a layout would set an undesirable precedent for similarly designed development. I therefore recommend refusal on this basis.

### **7.3. Site Drainage and Effluent Disposal**

As per the details accompanying the application there is an existing septic tank on the site which originally served the dwelling to the north which is to be decommissioned. It is located in the northern section of the site.

The application is accompanied by a completed site characterisation form wherein it is noted that groundwater was encountered at a depth of 1.5 metres. The first trial hole was unsuitable due to evidence of mottling at 500mm below ground level and signs of fractured rock at 1.6 metres below ground level. A further trial hole was dug in the south-eastern corner of the site which was considered acceptable with a T value of 14.72 recorded. On the basis of the above information a mechanical aeration unit with polishing filter proposed.

In view of the site characteristics, the density of development served by effluent treatment systems in the vicinity, the location of the proposed effluent treatment system upslope and in close proximity to the stream bounding the site to the east and the level of intervention required on site to accommodate a system, I submit that the proposal could be considered to run counter to the recommendations of the Rural Housing Guidelines which states that new development should be guided towards sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain such facilities.

The Board may consider this to constitute a new issue and wish to circulate to the relevant parties for comment.

## **Other Issues**

Access to the site is to be amended. It is to be relocated further east away from the appellant's entrance and will entail the piping of the stream under the driveway. The arrangement impinges on an adjoining landowner from whom consent has been secured. There is no objection to this arrangement.

Issues pertaining to extent of ownership and boundary lines constitutes a material issue in the appellant's submission. The agent for the appellant contends that the matter has been resolved in the courts. Notwithstanding the Board has no remit in the assessment or adjudication of such matters and I consider that the applicant has sufficient legal interest to make the application.

The applicant has confirmed that the gable wall of the dwelling to be demolished which supports the appellant's shed is to be retained.

Should the Board be disposed to a favourable decision the applicant should be advised of section 34(13) of the Planning and Development Act, 2000, as amended which states that a person shall not be entitled solely by reason of a permission to carry out any development.

### *Appropriate Assessment*

The site is adjacent to the Dingle Peninsula SPA. Having regard to the nature and scale of the proposed development and density of development in the vicinity 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

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

### **REASONS AND CONSIDERATIONS**

1. 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 area designated as being of secondary special amenity. The proposed development would lead to the erosion of the rural, scenic and landscape character of the area which it is necessary to preserve in accordance with objective ZL-1 of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. 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 eastern 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.

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

**January, 2019**