



An
Bord
Pleanála

Inspector's Report ABP 302805-18

Development	Construct dwelling with access from Rossdara Estate
Location	Coolclogher, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/524
Applicants	Dan and Anita Murphy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Richard Anderson & Others
Observer(s)	None
Date of Site Inspection	23/01/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.370 hectares, is in townland of Coolclogher c. 1.9 km to the south of Killarney town centre. It is irregular in shape and forms part of a larger field currently in agricultural use, the boundaries of which are delineated by stone walls and hedgerows.

The site is bounded by the Rossdara housing estate accessed from Loreto Road to the south with a dwelling and associated outbuilding to the north-west. The lands to the north and east are undeveloped with a copse of trees to the north-east.

2.0 Proposed Development

The application was lodged with the planning authority on the 31/05/18 with further plans and details submitted 29/08/18 following a request for further information dated 24/07/18 seeking a section drawing, entrance details from Rossdara Estate allowing for future access to lands to the north and a landholding map

Permission is sought for a 247 sq.m. two storey dwelling to be served by an access from the Rossdara estate to the south. Save for the entrance the existing hedgerow alongside the boundary wall in the estate is to be retained. Connection to public services are proposed.

An indicative line for a future access road to lands to the east/north is shown on the site layout plan submitted by way of further information.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 14 conditions. Of note:

Condition 6: Corridor to be maintained free of all development to allow for the possible future development of part of the lands to the north in accordance with the revised site layout plan received 29/08/18.

Condition 7: Occupancy clause

Condition 8: Dwelling to be used as permanent residence and not to be used as holiday or 2nd home.

Condition 9: Vehicular access to be located as shown on site layout plan received 29/08/18. New front boundary wall and wing walls to be constructed in sod and stone or native stone. Wing walls to be no more than 1 metre over existing road level and to be splayed at a 45 degree angle.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report following further information notes that a variation to the Killarney Town Development Plan has been adopted since the application was received. The site is zoned agriculture. Notwithstanding, it is important that any development does not impede access to the lands in the future if they are developed as the town expands. The revised site layout plan shows how this access can be accommodated. It is unlikely that this will be the access point for all of this land but it may cater for some of it, if and when it happens. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Executive Engineer, Killarney Municipal District recommends the entrance layout be revised in order to allow an access road for potential future development of the lands to the north. The 2nd report following further information recommends that a corridor should be maintained free from all development to allow for the possible future development of the land to the north in accordance with the revised site plan submitted.

National Roads Design Office has no observations.

3.3. Prescribed Bodies

Irish Water has no objection subject to signing of connection agreement.

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 traffic hazard, safety, residential amenity and removal of hedgerow.

Representation in favour of the application also on file.

4.0 Planning History

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

5.0 Policy and Context

5.1. Development Plan

Killarney Town Development Plan 2009-2015 (as extended)

Variation No.4 includes the population allocation and housing land requirement as contained in the Core Strategy of the Kerry County Development Plan 2015-2021. On foot of same the site is now zoned agriculture (it was previously zoned Residential Phase 2).

The objective is to conserve and protect previously undeveloped land from interference from unsuitable and premature development.

The purpose of this zone is to ensure the retention of agricultural uses and protect them from encroachment by unplanned urban sprawl and ribbon development.

The variation notes that generally residential development is not permitted on agricultural zoned land however consideration will be given, in the case of an application, for the construction of a dwelling house for the landowner or the son or daughter of the landowner or the favoured niece or nephew of the landowner to be used as their full time permanent residence.

5.2. Natural Heritage Designations

None in the vicinity.

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 3rd Party appeal against the planning authority's notification of decision to grant permission can be summarised as follows:

6.1.1. Site Access

- The proposed access does not have the sight line in to the driveway of No.34 Rossdara. Cars exiting from the driveway have to drive or reverse out beyond the path outer line to clear the wall creating a traffic hazard.
- The entrance to the proposed dwelling should be relocated further east to provide for adequate sight lines.

6.1.2. Future Access Road

- The revised site layout shows an access road to serve future development of lands to the north. It is 5.5 metres wide and does not include any footpaths, grass margins or services. It does not comply with standards.
- The public notices did not refer to this access road. Revised notices should have been sought to allow for further submissions. It does not form part of the application and should be omitted. Condition 6 of the permission should be removed.
- The site and wider lands are zoned agriculture in the Draft Municipal Area Plan. It is unclear as to why the planning authority sought the future access provision.
- If it is proposed to incorporate a future access road it should be in accordance with the requirements of the Draft Municipal Area Plan for Killarney which

shows an indicative road line to service these lands and other lands to the southeast and east of Killarney town.

- If the planning authority saw fit to identify this as a future access road it should have required proper plans and particulars to assess its suitability for a residential development.

6.1.3. Other Issues

- It is not clear whether the roadway onto which the access is proposed is in public ownership. The residents maintain the green area and grass margins. It is their understanding that this area and the roads have not been taken in charge. The planning authority should have sought documentary evidence of right of way.
- There is an area of land between the existing wall and the site boundary shown on the site layout map. This shows that the site does not extend to the boundary of the existing wall.

6.2. Applicant Response

The submission by Griffin Project Management on behalf of the applicants can be summarised as follows:

- The entrance as proposed is a splayed entrance and affords ample sight distances to ensure that there is no danger to pedestrians or vehicles.
- The applicants were advised at pre planning that this was the most suitable location for the proposed entrance.
- The access to the remainder of the lands was requested by the planning authority. Whilst it was not the intention of the applicants to develop the lands they can foresee that there may be some development on the lands in the future.
- The roads services of the estate are in the charge of Kerry County Council and subsequently the issue of consent over Rossdara Estate does not arise.

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:

- Policy Considerations
- Access and Traffic
- Other Issues

7.1. **Policy Considerations**

Subsequent to the lodgement of the application with the planning authority Variation No. 4 of the Killarney Town Development Plan 2009 (as extended), which includes the population allocation and housing land requirement as contained in the Core Strategy of the Kerry County Development Plan 2015-2021, was adopted. As a consequence the original Residential Phase 2 zoning for the lands of which the appeal site forms part has been replaced by Agricultural Zoning. I note that this zoning is also proposed in the Draft Killarney Municipal Local Area Plan 2018. The objective of the zone is to conserve and protect previously undeveloped land from interference from unsuitable and premature development. The variation and draft LAP state that generally residential development is not permitted but that consideration will be given to the construction of a dwelling house for the landowner or the son or daughter of the landowner or the favoured niece or nephew of the landowner to be used as their full time permanent residence. Consequent to the further information request the agent for the applicant submitted details of the applicant's ownership of the land.

Taking into consideration the location of the site within the development boundary of Killarney, albeit on lands zoned for agriculture, and the fact that the applicant is the landowner I have no objection to the proposal subject to an occupancy clause.

The proposed 2 storey dwelling design and layout is acceptable and due to the separation distances to be maintained to the dwellings to the south and retention of the hedgerow along the shared boundary, I do not consider that issues of overlooking or loss of privacy would arise.

Connection to public services is proposed.

7.2. Access and Traffic

Access to the development is proposed via a new entrance from Rossdara to the south which, in the vicinity of the site, is a cul-de-sac of detached and semi-detached two storey dwellings. Both vehicular movements and speeds are low along same. A low block wall backed with a hedgerow currently delineates the boundary.

The appellants' substantive concern centres on the indicative line delineated for a future access road to serve the potential development of lands to the north of the appeal site. It did not form part of the proposed development as described in the public notices and was sought by the planning authority by way of further information. Revised public notices were not sought.

The lands in question are zoned agriculture in both the current Town Development Plan (by way of variation no.4) and in the Draft Killarney Municipal LAP which would cover the period to 2022. I note in the relevant maps in both documents that no such potential future access has been delineated with an indicative road shown to the east bisecting the agricultural zoned lands and connecting to Loreto Road to the south. It would be reasonable to assume that should the said agricultural zoned lands be considered for development in the future that access would be via this indicative line. On this basis, therefore, I consider it unreasonable for the planning authority to require such provision from the proposed access arrangements serving 1 no. dwelling at this juncture. I therefore recommend that condition 6 attached to the planning authority's notification of decision be omitted. A condition setting out the nature and extent of the development can be attached to a grant of permission in the interests of clarity.

Consequent to the requirement to provide for the future access road connection, both the driveway to the proposed house and the access were altered and expanded. Concern is expressed by the appellants to its relative proximity to No 34 Rossdara and the potential for conflicting turning movements due to the angle of the vehicular access to same. In view of the fact that the future access road connection is not considered appropriate at this juncture the access arrangements should be scaled back to that appropriate to serve a single dwelling, only. In doing so the position of the entrance can be so located in the boundary wall as to eliminate the potential for conflicting movements. Subject to this amendment I consider that the vehicular movements arising from the dwelling can be accommodated within the existing Rossdara estate roads without giving rise to concerns in terms of capacity of the road network or vehicular or pedestrian safety and would not give rise to conflicting movements with No.34 Rossdara adjoining.

7.3. **Other Issues**

The planning authority in its assessment of the application did not raise issues in terms of consent to carry out the works to the boundary. The agent for the applicant in response to the grounds of appeal states that the estate has been taken in charge by the County Council. The applicant should be advised of Section 34 (13) of the Planning and Development Act 2000, as amended, that a person is not entitled solely by reason of a permission to carry out any development.

Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European 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**

Having regard to the documentation on file, the grounds of appeal, a site inspection and the assessment above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the location of the site, the pattern of development in the area and the nature and extent of the development proposed, 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 as amended by the further plans and particulars submitted on the 29th day of August 2018, 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. This grant of permission is for a dwelling and vehicular access from Rossdara housing estate, only. It does not refer to the proposed future access road as delineated on the site layout plan received by the planning authority on the 29th of August 2018.

Reason: In the interest of clarity.

3. (a) The proposed access shall be reduced in width and shall be repositioned 2 metres to the east of its location as delineated on the site layout plan received by the planning authority on the 29th of August 2019.
- (b) The proposed driveway serving the dwelling shall not be wider than 5 metres

A revised site layout plan with the said amendments shown thereon shall be submitted to the planning authority for its written agreement prior to commencement of development.

Reason: In the interest of orderly development and traffic safety.

4. (a) The proposed dwelling, when completed, shall be first 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 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 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.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. Construction works shall be carried out only between the hours of 0830 to 1800 Monday to Fridays inclusive and between 0830 to 1300 on Saturdays. No construction work shall place on Sundays or public holidays.

Reason: To protect the amenities of adjacent properties and in the interest of orderly development.

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

Pauline Fitzpatrick
Senior Planning Inspector

February 2019