



An  
Bord  
Pleanála

## Inspector's Report ABP-303440-19

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<b>Development</b>	Construct a dwelling house.
<b>Location</b>	Barleymount West, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/648
<b>Applicant(s)</b>	Sandra Dunlea
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	(1) Dermot and Breda Griffin (2) Micheál Griffin
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26 <sup>th</sup> February 2019
<b>Inspector</b>	Elaine Power

## **1.0 Site Location and Description**

- 1.1. The site is located in a rural area, approx. 6km north west of Killarney. It has a stated area of 0.44ha and is generally rectangular in shape. It is currently in use as agricultural lands and is characterised by grassland with mature vegetation along the boundaries. The site is set back approx. 190m from the public road (L-3702).
- 1.2. The general area is elevated with mountain views and the subject site is located in low lying section of the overall farm holding. The site is bound by agricultural lands. There is a significant number of one-off rural dwellings located immediately north and east of the site.
- 1.3. Access is from the local road network, which has a speed limit of 80kph. The carriageway is approx. 5.8m in width with no footpaths or public lighting. The road slopes down from north to south.

## **2.0 Proposed Development**

- 2.1. It is proposed to construct a part two-storey, part single storey residential dwelling. The design is a modern approach to a traditional vernacular and comprises a two-storey barn style building with a single storey flat roof contemporary style projection on the western elevation. It has a stated gross floor area of 408sqm and a maximum height of 7.8m.
- 2.2. Access to the site is proposed from the local road network via a new 6m wide access road approx. 190m in length.
- 2.3. The house will be connected to the existing public water mains. A wastewater treatment system and percolation area is proposed to serve the development.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 16 no conditions. The relevant conditions are noted below:

- Condition 3 required all external materials to be of neutral colour, tone and texture.
- Condition 4 ensured the house is permanently occupied by the applicants for a minimum of seven years.
- Condition 5 ensured the dwelling is a primary residence and not used as a holiday home.
- Condition 14 related to the type of the waste water treatment system to be installed on site.
- Condition 16 related to the maintenance of the waste water treatment system.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The initial Area Planners report (29<sup>th</sup> June 2018) noted that the site is located in an area identified as 'Stronger Rural Area' and raised no objection in principle to the proposed development. However having regard to the proliferation of individual waste water treatment systems in the area an assessment of the risk posed to groundwater quality was request by further information.

The final report (22<sup>nd</sup> November 2018) considered that the response to further information adequately addressed concerns raised regarding the potential risk to groundwater. It was recommended that permission be granted subject to conditions.

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

**Environment Department:** Recommended that further information be requested regarding the potential risk posed to groundwater quality from the proliferation of individual waste water treatment systems in the area. This was reflected in the request for further information.

### 3.3. **Prescribed Bodies**

**Irish Water:** No objection subject to conditions.

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

3.4.1. A letter of support was submitted from Danny Healy-Rae TD.

3.4.2. Two third-party objections were received from (1) Dermot and Breda Griffin and (2) Micheál Griffin who both own property to the north / north east of the subject site. The submission noted that permission was previously refused for a similar development and none of the reasons for refusal have been adequately addressed in this application. The only difference is that the subject site is relocated further east (away from the public road).

## 4.0 **Planning History**

### **Subject Site**

None

### **Adjoining site**

**Reg. Ref. 16/985, PL08.249056:** Permission was refused for a one-off rural dwelling on a site located to the east of the subject site for the same applicant. The reasons for refusal are as follows: -

1. Having regard to the location of the site within an “Area Under Strong Urban Influence” as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Kerry County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
  
2. Taken in conjunction with existing and permitted development in the area, the proposed development would constitute an excessive density of suburban-type development in a rural area, which would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities, and would, therefore, be contrary to the proper planning and sustainable development of the area.
  
3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by individual wastewater treatment systems in the area. The proposed development, would, therefore, be prejudicial to public health.

## **5.0 Policy and Context**

### **5.1. Killarney Municipal District Local Area Plan 2018-2024**

5.1.1. The site is located on unzoned lands within the north western environs of Killarney. The Plan acknowledges that there is a need to maintain and strengthen rural communities throughout the county and to provide for the needs of local people to live in their own community and, where possible, on their own land and will endeavour to accommodate genuine rural-generated housing in the area it arises and to accommodate urban generated housing within the development boundary of all towns and villages,

### **5.2. Kerry County Development Plan, 2015-2021**

5.2.1. The site is located in an area of unzoned land. Map 3.3 - Rural Area Types identifies the site as being located in a 'Rural Areas under Strong Urban Influence'. Policies RS-1, RS-2, RS-3, RS-4, RS-5, RS-6, RS -7 and RS-9 are relevant when assessing applications for dwellings in rural areas and ensure that favourable consideration is given to individual one-off house developments for immediate family members on family farms and land holdings, while directing urban generated housing into the towns and villages.

5.2.2. The landscape is identified as 'Rural General' these landscapes generally have a higher capacity to absorb development than other designations. Proposed developments in these areas, should take account of the topography, vegetation, existing boundaries and features of the area.

5.2.3. Section 13.4 sets out standards and guidelines for residential developments in rural and non-serviced sites.

5.2.4. Kerry County Councils Design Guidelines ' Building a House in Rural Kerry', 2009 are also relevant.

### 5.3. **National Planning Framework**

5.3.1. Policy Objective 19: 'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements'.*

### 5.4. **Natural Heritage Designations**

5.4.1. There are no relevant designated areas in the vicinity of the site.

### 5.5. **EIA Screening**

5.5.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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. This is a third party by (1) Dermot and Breda Griffin and (2) Micheál Griffin against the decision of Kerry County Council to grant permission. The main grounds of the appeal are detailed below.

- Permission was refused (reg. ref. 16/985) for a development which was similar in design and layout to the proposed development. The only difference is that the subject site is relocated further east. The 3 no. reasons for refusal have not been addressed in this application.
- The applicant does not have a genuine reason to live in the area and the proposed development would set an undesirable precedent.
- The house should be closer to the original family home. The size and scale of the house is out of character with the pattern of development in the rural area. It would also constitute overdevelopment of this elevated site and would be visually dominate in the landscape.
- Due to the style, bulk and scale the design is not in keeping with Kerry County Councils Design Guidelines outlined in Building a House in Rural Kerry.
- The development would constitute an excessive density of suburban type development in a rural area
- The proposed wastewater treatment system in conjunction with existing developments would result in an excessive concentration of sites served by individual waste water treatment systems.

### 6.2. Applicant Response

6.2.1. A detailed response was submitted by the applicant. In particular, it notes that the applicant is an intrinsic member of the community, with strong familial links to the area and is compliant with rural housing policy. A letter of consent from the applicant's father who is the landowner has also been submitted.



6.2.2. The site is located on farm lands which have been in the family's ownership for over 100 years. No section of the site has been subdivided or sold off to date.

6.2.3. The applicant was raised on the farm and her parents still live in the family home and the farm is still in operation. The applicant has been renting accommodation located on the opposite side of the road from the subject site, since 2009 and her three children attend local schools / pre-schools.

6.2.3 The applicant is employed part time (mornings only) as an occupational therapist for the HSE. Due to the nature of the work she is not office based and conducts home calls to clients in the Barleymount and Fossa area. She also works part time on the family farm. The applicants long term plans include caring for her parents.

6.2.4. There are a variety of house types and large traditional farm yard sheds in the area. The design which is reflective of a farm yard, enhances the immediate area by breaking the dominance of excessive conventional style suburban house type in a rural area. The site is not elevated. The house has been relocated to low lying section of the farm lands to ensure the dwelling to reduce the visual impact. The location of the development was also chosen as it achieved the best percolation test results.

6.2.5. As part of the further information requested a hydrogeological report on the potential impact of the development on the quality of ground water. The report concluded that the development would not pose a risk and it is noted that the Planning Authority had no objection.

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

None

### 6.4. **Observations**

None

## 7.0 Assessment

7.1.1. The main issues in this appeal are compliance with rural housing policy, water services, and design and visual impact. Appropriate Assessment requirements also need to be addressed. I am satisfied that no other substantial issues arise. The main planning issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy.
- Water Services
- Design and Visual Impact.
- Appropriate Assessment.

### 7.2. ***Compliance with Rural Housing Policy***

7.2.1. Map 3.3 - Rural Area Types of the Development Plan identifies the site as being located in a 'Rural Area under Strong Urban Influence' in close proximity to the boundary with a 'Stronger Rural Area'. It is noted that the Planning Authority determined the site to be in a 'Stronger Rural Area'. The Development Plan notes that rural areas under strong urban influence exhibit evidence of considerable pressure for housing due to proximity to urban centres and result in pressure on local infrastructure such as the road network. Having regard to the proximity of the site to Killarney and the N72 and the significant proliferation of one-off rural houses in the wider area I considered the 'Rural Area Under Strong Urban Influence' to be the correct and more appropriate designation for the site.

7.2.2. Objective RS-7 of the Development Plan requires a favourable consideration be given for one-off rural houses for immediate family members on family farms and land holdings in 'Rural Areas Under Strong Urban Influence'. A detailed account of the applicant's connection to the area has been submitted as part of the response to the appeal. It is noted that the subject site is located on family farm lands which have been in the ownership of the family for over 100 years. It is also noted that no section of the farm has not been subdivided or sold off. The applicant grew up on the family farm and has been living in rented accommodation adjacent to the subject site with

her family since 2009. A lease agreement from 2009 and utility bills from 2010 and 2018 have been submitted. The applicant works part time (mornings only) in the local area as an occupational therapist for the HSE. It is stated that the applicant is not office based and provides house calls to clients in the townlands of Barleymount and Fossa. It is noted that the applicant's children attend local schools / pre-schools.

7.2.3. The applicant has stated that due to the small scale of the family farm assistance is often required to facilitate the viability of the enterprise and in this regard, she works with her father on the family farm. Information submitted with the application to Kerry County Council also noted that the applicant is active in the local community and was involved in fundraising for a local Astro Turf facility and a playground. It is also noted that she is actively involved in the parent's association of the local school. A letter of support from the applicant's father was submitted with the original application. Having regard to the documentation submitted, it is considered in this instance that the applicant would meet the criteria of Objective RS-7.

7.2.4. Notwithstanding compliance with Objective RS-7 regard should also be had to Policy Objective 19 of the National Planning Framework which provides a more restrictive approach to rural housing. It requires that the core consideration for the provision of a one-off rural house be based on the demonstratable economic or social need to live in the rural area.

7.2.5. With regard to an economic requirement to live in the area it is noted that the applicant works on the farm to assist her father. However, as the applicant does not solely rely on the farm for employment it is considered that there is not a sufficient economic reason to reside in the rural area. With regard to a social need to live in the area it is noted that the applicant has lived in the immediate area of the subject site for the majority of her life. However, having regard to the viability of existing rural villages and settlements and the efficient provision of public services and infrastructure it is considered that this is not a sufficient reason to live in a rural area and in accordance with Objective RS-9 of the Development Plan urban generated housing should be directed into towns and villages.

7.2.6. In the absence of an identified locally based economic or social need to live in the area it is considered that the proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would negatively impact on the viability of smaller towns and rural settlements. It is recommended that permission should be refused on this basis.

### 7.3. **Water Services**

7.3.1. It is proposed to install a packaged pumped wastewater treatment plant and gravity fed polishing filter which will discharge to groundwater. The treatment system is located approx. 8m to the south east of the house with the polishing filter located approx. 100m to the east of the house. Table 6.1 of the 'EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses' sets out minimum separation distances. The proposed system reaches and exceeds the recommended separation distances.

7.3.2. The submitted Site Suitability Assessment Form states that a trial hole, with a depth of 2.1m recorded the following: 300mm of silt topsoil; 900mm of firm / stiff dilatant silt / clay; and 900mm of denser silt / clay. Notably, no rock or water ingress were recorded. With regard to the percolation characteristics of the soil 3 no. trial holes were examined. They resulted in T values of 41.67 minutes / 25mm, 50.83 minutes / 25mm and 54.58 minutes / 25mm. As 2 no. results were above 50 a P test was also carried out at the 3 no trial holes. An average P value of 23.39 minutes / 25mm was recorded. This indicates that the site is suitable for the installation of an on-site domestic waste water treatment system.

7.3.3. Having regard to the previous reason for refusal on the adjoining site (PL08.249056) the Planning Authority raised concerns regarding the potential risk to groundwater from the proliferation of individual wastewater treatment plants in the immediate area

and requested further information be sought to address these concerns. In response a Hydrogeological Impact Assessment Report was submitted. The report noted that the development is in accordance with the EPA Code of Practice and would have no measurable impact on groundwater. It also noted that there are no obvious targets at risk, there are no wells within 250m of the proposed treatment system and all neighbouring properties are supplied by mains water. The Planning Authority were satisfied with the information submitted.

7.3.4. Concerns regarding the potential risk to groundwater was raised in the appeal. Having regard to the information submitted in the site characteristics form, which shows that the site is suitable for discharge to groundwater and the evidence provided in the Hydrogeological Impact Assessment which concluded that the proposed development would not pose a risk to groundwater I am satisfied that the subject site is suitable for the installation of the proposed pumped packaged wastewater treatment system and polishing filter and would not have a negative impact on quality of groundwater and should not form the basis of a refusal of planning permission.

#### **7.4. *Design and Visual Impact***

7.4.1. The proposed development comprises a part two-storey part single storey residential dwelling. The two-storey element of the house is barn style building with a single storey flat roof contemporary projection on the western elevation. The two-storey element has a maximum height of 7.8m. The site is located on low lying grounds approx. 190m from the public road. The local road network is characterised by ribbon development and there are a significant number of one-off rural houses located immediately to the north and east of the subject site including 'cul-de-sacs' of new housing with a suburban appearance.

7.4.2. Concerns have been raised that the overall size, scale, bulk and design of the proposed dwelling house would be out of character with the prevailing pattern of development in the area which is predominantly characterised by traditional style

dwellings. Concerns have also been raised that the design of the proposed development does not comply with the guidance contained in *'Building a House in Rural Kerry'* as issued by Kerry County Council and that it will be visually obtrusive as a result of its failure to integrate with the surrounding landscape.

7.4.3. It should be noted that the site is not located within any identified scenic or amenity designation and that the wider area is identified as *'Rural General'* in the Development Plan. These areas are considered to comprise the least sensitive landscapes in the county and generally have a higher capacity to absorb development than other locations. Regard should also be had to Objective RS-3 of the Development Plan which requires favourable consideration be given to permanent places of residence on vacant sites within existing cluster developments.

7.4.4. It is acknowledged that the proposed design is at variance with the surrounding pattern of development which predominantly comprises traditional single storey bungalows and dormer-style dwellings. However, it is considered that the design, which is a contemporary approach to the traditional vernacular, and the siting of the house, approx. 190m from the local road in a low-lying section of the overall site, ensures that the building is successfully integrate into the rural landscape. It is my opinion that the design which reflects a farmyard would enhance the character of the rural area.

7.4.5. Having regard to the topography and size of the site and the overall scale, design, siting and orientation of the proposed development it is my opinion that the proposed development would not have a negatively impact on the existing residential amenities in terms of overlooking, overshadowing or have an overbearing impact.

7.4.6. It is noted that permission was previously refused (PL08.249056) for a house on the adjoining site due to concerns that the proposed dwelling in conjunction with existing one-off houses would constitute an excessive density of suburban type development. Notwithstanding this reason for refusal on the adjoining site it is my opinion that due to the set back from the public road and the high-quality contemporary design, the

proposed development would not result in a negative impact on the rural character of the area and should not form the basis for a reason for refusal.

7.4.7. It is noted that Condition 3 of the final grant of permission from Kerry County Council required that the external materials be of a neutral tone and colour. Having regard to the style of the dwelling and the context of the landscape it is considered that a wider pallet of materials would be acceptable in this instance and, if permission is being contemplated it is not necessary to restrict the external finishes.

#### **7.5. Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development and the distance from 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**

I recommend that permission be refused for the reasons stated in the attached schedule.

### **9.0 Reasons and Considerations**

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005. Furthermore, the subject site is located in an area that is designated under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside, based on the

core consideration of demonstrable economic or social need to live in a rural area. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding to the provisions of the current Kerry County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.

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Elaine Power  
Planning Inspector

12<sup>th</sup> April 2019