



An  
Bord  
Pleanála

## Inspector's Report ABP-303582-19

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<b>Development</b>	Construction of a dwelling house, garage, private driveway, mechanical treatment unit, and polishing filter.
<b>Location</b>	Coolies, Muckross, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/1094
<b>Applicant(s)</b>	Mary Lyne & Ann Spillane
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 20 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Michael J. Horgan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	3 <sup>rd</sup> May 2019
<b>Inspector</b>	Hugh D. Morrison

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## **1.0 Site Location and Description**

- 1.1. The site is located 5.4 km (as the crow flies) to the SE of Killarney town centre and 2.5 km to the E of the N71 at Muckcross. This site lies in an upland area of farmland and forestry. It is accessed by means of the local road network, which is well punctuated by one-off dwelling houses. The Owgarriff River runs to the N of the site. This River joins the Finow River further to the NE, which in turn joins the River Flesk, which flows into Lough Leane.
- 1.2. The site is situated in a position that is recessed from the local road frontage to the applicant's land to the ENE. It is accessed via an existing farm gateway and farm track. The site itself is of rectangular shape and it occupies the SE corner of one of the applicant's fields. This site, which has an area of 0.41 hectares, is relatively flat and it is sheltered to the south by existing coniferous trees.

## **2.0 Proposed Development**

- 2.1. The proposal would entail the construction of a two-storey dwelling house with a part two storey/part single storey return. The principal elevation would address, albeit at some remove, the local road to the ENE. This dwelling house would have a floorspace of 232.5 sqm and it would be accompanied by a freestanding garage to the rear with a floorspace of 41.36 sqm.
- 2.2. The proposed dwelling house would be connected to the public water mains, which passes alongside the aforementioned local road, and it would be served by a mechanical treatment unit and polishing filter. Gardens would be laid out around the dwelling house and hedgerows would be planted to denote the boundaries to the main body of the site. The existing means of access and gateway to the site would be upgraded.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted, subject to 20 conditions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

See planning decision.

### 3.2.2. Other Technical Reports

- County Archaeologist: Advises that sufficient distance exists between proposal and a nearby ringfort (recorded monument Ke075 006).
- Irish Water: No objection: Advises that 700mm rising main is located within the site and it is the subject of wayleaves.

## 4.0 Planning History

Site

- PP5562: Pre-application consultation occurred on 23<sup>rd</sup> May 2018.

Adjacent site to the ENE

- 06/3957: Outline application for a one-off dwelling house: Refused on the grounds of obtrusiveness within a scenic landscape/ribbon development/ adverse precedent.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Kerry County Development Plan 2015 – 2021 (CDP), the site is shown as lying within a Stronger Rural Area and in an area of Secondary Special Amenity.

### 5.2. Natural Heritage Designations

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC & pNHA (site code 000365)
- Killarney National Park SPA (site code 004038)

### 5.3. EIA Screening

Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2018, where more than 500 dwelling units would be constructed, the need for a mandatory EIA arises. The proposal is for the development of a single dwelling house. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall so far below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Concern is expressed over the compliance of the proposal with the CDP. In this respect, attention is drawn to the location of the site within an area of Secondary Special Amenity wherein new development must be capable of being integrated into the landscape. Given the number of existing dwelling houses within the vicinity of the subject site, the proposal would lead to an excessive density of development with adverse implications for the character of the landscape.
- The proposal would constitute backland development of a haphazard nature.
- The proposal would generate traffic movements between the site and Killarney Town, which would be inherently unsustainable.

### 6.2. Applicant Response

- The applicants would comply with the CDP's Rural Settlement Policy for areas of Secondary Scenic Amenity, as Mary was born in and lives and works in the locality and Ann, likewise, lives and works in the locality. The proposal would be sited on the farm, which Mary owns and runs as a dry cattle and organic vegetable farm. A primary residence is necessary, due to the intensive nature of the farm work.

- The submitted Site Characterisation Assessment concludes that the subject site would be appropriate for the type of effluent treatment and discharge proposed.
- The siting of the proposal would be such that existing landscaping would afford screening, which would be augmented by proposed landscaping. This siting would be recessed from the public road and it would afford privacy and quietude.
- The design of the proposed dwelling house would reflect traditional patterns that specify hipped roof ends and a vertical emphasis to openings in the principal elevation.

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

None

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of relevant national planning guidelines, the National Planning Framework (NPF), the CDP, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Rural settlement policy,
- (ii) Siting and design,
- (iii) Traffic and access,
- (iv) Water, and

(v) Appropriate Assessment.

**(i) Rural settlement policy**

7.2. National Policy Objective 19 of the NPF emphasises the need to distinguish between areas under urban influence and other areas, when considering one-off dwelling houses in the countryside. As the site lies within 5.4 km of Killarney town centre, it, arguably, comes within the sphere of this town's influence. The former National Spatial Strategy recognised as much by showing the site indicatively as lying in an Area under Strong Urban Influence. By contrast, the CDP shows this Area as more tightly drawn around Killarney and so the site is shown as lying within a Stronger Rural Area.

7.3. Objective RS-10 of the CDP addresses Stronger Rural Areas. It states the following: "Facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised..." Under the CDP, the site also lies in an area of Secondary Special Amenity. Table 3.7 states that within such an area, applicants for one-off dwelling houses will need to come within one or more of the following categories:

- *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 January 2003 with the applicant having been reared in the locality.*

An accompanying note states that the above categories take effective precedence over the intrinsic test of Objective RS-10.

7.4. The applicants have completed supplementary information in which they have stated that they are both self-employed full-time farmers who work the farm (4.16 hectares) on which the proposed dwelling house would be sited. At present they reside in the locality, i.e. with a brother/uncle in the family homestead on a nearby farm. (A submitted plan, denoted as farm site location map, shows the relationship of these two farms to one another). They further state that they would reside in the proposed dwelling house as their primary permanent place of residence.

7.5. At the appeal stage, the applicants have elaborated on the aforementioned supplementary information. Thus, Mary states that she was born in the locality and that she owns the farm in question, which is run as a dry cattle and organic vegetable farm. During my site visit, I observed the said cattle only. I also observed that the former cottage in the SW extremity of the site is in use in connection with the farming of these cattle.

7.6. From the above information,

- It appears, based on the former cottage and the farm track to it, that Mary's farm has been in the family since at least the 1950s and so in excess of 10 years. The principal family residence since then appears to have been on her brother's farm, where she and her niece presently reside. This residence is nearby and so in the same locality. Thus, the provisions of the first category cited above are, *prima facie*, met.
- Insofar as the applicants' farm, they have a genuine rural employment need, although I remain to be persuaded that the farm in question, which is presently only in use for dry cattle, affords a full time living for them. If organic vegetable growing was to be introduced in the future, then more intensive farming would occur, although a full-time living would still, in my view, be unlikely.
- The applicants' family has resided in the locality since before January 2003 and Mary has stated explicitly that she was born therein and so she was presumably "reared in the locality", too.

7.7. If in the light of paragraph 7.2 of my assessment, the Board considers that the site should be regarded as being in a rural area under strong urban influence, then under Objective RS-7 of the CDP the first of the aforementioned three categories would be applicable.

7.8. I, therefore, conclude that the applicants are candidates for a one-off dwelling house on the site under the CDP's rural settlement policy.

#### **(ii) Siting and design**

7.9. The proposed dwelling house would be sited centrally within the main body of the site and in position which would be set back some 110m from the local road to the



ENE. The principal elevation of this dwelling house would address this road. Existing mature coniferous trees to the south of the site would provide “instant” screening for the dwelling house from the local road and the neighbouring property to the south and, in time, additional planting would add to the screening that would be available.

- 7.10. The appellant expresses concern that the proposal would lead to an excessive density of development in what is an area of Secondary Special Amenity. He also expresses concern that it would be sited in a backland position.
- 7.11. I note that there are a significant number of one-off dwelling houses in the locality and that the majority of these dwelling houses occupy roadside sites, which are typically laid out in rows. I note, too, that this locality is served by a public water mains and so I assume that most if not all of the said dwelling houses rely upon this mains for their water supply.
- 7.12. Under Section 13.4 of the CDP, standards and guidelines for one-off dwelling houses in the countryside are laid out. These do not require that dwelling houses be sited on plots that adjoin the public road. They refer to the Design Guidelines entitled “Building a House in Rural Kerry”, which advise on the siting of dwelling houses in set back positions, where screening within the landscape can be readily afforded. The current proposal would comply with this advice.
- 7.13. While I recognise that the density of development in the locality is significant, given the siting of the proposal, the perception of further densification would be limited. From a practical perspective, the reliance of dwelling houses upon the public water mains reduces any conflict between the introduction of the proposed waste water treatment system and existing wells.
- 7.14. Turning to the design of the proposed dwelling house, the applicant has submitted photographs to illustrate that the specification of hipped ends to the main roof and a pair of chimneys on the ridgeline would reflect the vernacular architecture of the County. They have also drawn attention to the vertical emphasis of the windows in the principal elevation. The finishing material would be plaster and the roof would be clad in slate.
- 7.15. The main body of the dwelling house would be of rectangular form. To the rear there would be a two storey return with a hipped end to its roof, which would be accompanied by a single storey return to the rear and a single storey return to its

northern side. The first of these single storey returns would have a straight end to its roof, while the second would have a half hipped end that would wrap around the two storey return. These two returns would lead to complicated and ungainly additions to the two storey return, which, by contrast, would complement the main body of the dwelling house. The aforementioned Design Guidelines advise against complicated and ungainly forms and so I consider that, to ensure compliance with the same and an aesthetically pleasing outcome, the two single storey returns should be omitted by condition from the proposal. Such a condition should afford some flexibility for consequent changes to the internal layout and accompanying openings to the resulting dwelling house. An additional condition should remove domestic exempted development rights to afford the Planning Authority control over any future extensions, in the interest of visual amenity.

- 7.16. The main body of the site would be the subject of native hedge planting around its perimeter. Further tree planting would occur within this site and alongside the proposed driveway, which would be formed along the line of the existing farm track. The finishing material of this driveway has not been made explicit and so it, too, should be conditioned to ensure that this material is permeable and of discrete appearance.
- 7.17. The siting and design of the principal elevation of the proposed dwelling house would be appropriate to the site's location within an area of Secondary Special Amenity. The single storey rear returns would, however, give rise to an unduly complicated and ungainly form and so they should be omitted by condition.

### **(iii) Traffic and access**

- 7.18. The proposed dwelling house would generate additional traffic movements at the existing farm gateway. This gateway lies on a relatively straight stretch of the local road and so forward visibility along this road is good, as are the sightlines available to exiting drivers.
- 7.19. The appellant expresses concern that the proposal would generate unsustainable patterns of traffic between the developed site and Killarney. However, given that the applicants reside in the locality at present, the trips that they make to and from this town at present would, presumably, be replicated in the future. Thus, it is not clear to me that these patterns would deteriorate.

- 7.20. Under the proposal, the existing farm gateway would be reconstructed as a domestic one on a similar basis to the template set out in the aforementioned Design Guidelines, i.e. 45 degree splayed wing walls and a 8m set back from the edge of the carriageway to afford space for a vehicular refuge.
- 7.21. I conclude that the additional traffic that would be generated would be capable of being satisfactorily accommodated at the upgraded access point to the site.

#### **(iv) Water**

- 7.22. The proposal would be served by a connection to the public water mains that runs alongside the nearby local road. Waste water would be processed by means of a mechanical treatment unit and polishing filter and surface water would continue to be handled by means of “existing on-site water regime”.
- 7.23. Irish Water has raised no objection to the proposed connection. The application is accompanied by a completed Site Characterisation Form, which concludes that discharge to ground water via a packaged waste water treatment system and polishing filter would be appropriate for the subject site, i.e. the Tricel Novo Mechanical Aeration Unit.
- 7.24. As indicated above hard surfaces at ground level should be finished in permeable material and surface water from rainwater goods should discharge to soakaways.
- 7.25. The OPW’s flood information website indicates that there is no identifiable flood risk pertaining to the site.
- 7.26. The proposed water supply and drainage arrangements for the site would be satisfactory.

#### **(v) Appropriate Assessment**

- 7.27. The site does not lie within a Natura 2000 site. However, the Owgarriff River, which runs to the north of it, forms part of the Killarney National Park, Macgillycuddy’s Reeks and Caragh River Catchment SAC (site code 000365) and further to the east this SAC overlaps with the Killarney National Park SPA (site code 004038).
- 7.28. The separation distance between the site and the Owgarriff River is c. 0.2 km. I am not aware of any source/pathway/receptor route between this site and the River and so I consider that the proposal would be unlikely to have any significant effects upon the conservation objectives of the SAC.

- 7.29. The qualifying interests of the aforementioned SPA are the Merlin and the Greenland White-fronted Goose. The former species tends to nest either in heather ground or in coniferous trees and to forage in open ground. The latter species winters in wetlands. The proposal would not entail the loss of any coniferous trees or encroachment upon any wetlands. The loss of open farmland would extend over only 0.41 hectares and so it would not be significant.
- 7.30. Having regard to the nature and scale of the proposal and the nature of the receiving environment, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. That permission be granted.

## 9.0 Reasons and Considerations

Having regard to the Kerry County Development Plan 2015 – 2021, it is considered that, subject to conditions, the proposal would comply with the provisions of the Rural Settlement Policy and the provisions consequent upon the site's location within an area of Secondary Scenic Amenity. The siting of the proposal would facilitate its integration within the landscape and, subject to a simplification in its form, the design of this proposal would be compatible with the visual amenities of the area. The proposed access and servicing arrangements for the site would be satisfactory. No Appropriate Assessment issues would arise. The proposal would thus accord 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, 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
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	<p>authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The two single storey returns to the dwelling house shall be omitted.</p> <p>(b) Any consequential changes of (a) upon the internal layout of the dwelling house and the provision of openings shall be made explicit.</p> <p>(c) Surface water from the roof of the dwelling house and garage shall drain to a soakaway(s).</p> <p>(d) Ground level hard surfaces shall be finished with a permeable material.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of visual amenity and the satisfactory management of surface water.</p>
3.	<p>(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.</p> <p>(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.</p>

	<p>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.</p> <p><b>Reason:</b> 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 in the interest of the proper planning and sustainable development of the area.</p>
4.	<p>(a) The entrance gate to the proposed dwelling house shall be set back as shown on the submitted site layout plan. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height.</p> <p>(b) The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.</p> <p><b>Reason:</b> In the interest of traffic safety and visual amenity.</p>
5.	<p>The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>The external walls shall be finished in neutral colours such as grey or off-white.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
7.	<p>Window and door joinery and rainwater goods and accompanying fascias and soffits shall not be composed of white uPVC.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
8.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
9.	<p>(a) The treatment plant and polishing filter shall be located, constructed</p>

	<p>and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakaways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p><b>Reason:</b> In the interest of public health.</p>
10.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>(a) Drawings to scale of not less than 1:500 showing –</p>

	<p>(i) A survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation or removal.</p> <p>(ii) A continuous hedge of indigenous species (e.g. holly, hawthorn, beech or field maple) planted for the full length of the boundaries to the main body of the site.</p> <p>(iii) At least 10 number trees planted to the front and rear of the dwelling house in informal clusters and groups and a further 7 number trees planted alongside the driveway.</p> <p>(v) Any hard landscaping works, including car parking layout, enclosed areas, lighting and outdoor seating, specifying surfacing materials.</p> <p>(c) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established</p> <p>(d) A timescale for implementation, which shall provide for the planting of hedgerows and trees to be completed before the dwelling house is first made available for occupation.</p> <p>Deciduous trees shall be planted at not less than two metres in height and evergreen species at not more than 750 millimetres in height. Species to be used shall not include either cupressocyparis x leylandii or grisellinia.</p> <p>Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
11.	<p>Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwelling house without a prior grant of planning permission.</p>



	<p><b>Reason:</b> In order to afford the Planning Authority the opportunity to control such development in the interest of visual amenity.</p>
12.	<p>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.</p> <p><b>Reason:</b> 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.</p>

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Hugh D. Morrison  
 Planning Inspector

14<sup>th</sup> May 2019