



An
Bord
Pleanála

Inspector's Report ABP-304009-19

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| Development | To retain a proprietary waste water treatment system and ancillary site works as constructed and completed. |
| Location | Laharan, Killorglin, Co. Kerry |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 18/1283 |
| Applicant(s) | John Martin & Deidre Naughton |
| Type of Application | Retention permission |
| Planning Authority Decision | Refusal |
| Type of Appeal | First Party -v- Decision |
| Appellant(s) | John Martin & Deidre Naughton |
| Observer(s) | None |
| Date of Site Inspection | 19 th July 2019 |
| Inspector | Hugh D. Morrison |

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1.0 Site Location and Description

- 1.1. The site is located on elevated land, 1.6 km to the west of Killorglin town centre and off a local road, the L-11731, which is accessed off the N70, Ring of Kerry route. This site lies beyond the continuously built-up area of the town and amidst undulating countryside that is punctuated by one-off dwelling houses. It is one of a cluster of six sites that have been developed over the years to provide dwelling houses. The site is at the south-eastern extremity of this cluster and it adjoins the L-11731 as it rises in a westerly direction. A further cluster of four dwelling houses accompany the junction between the aforementioned national secondary and local roads.
- 1.2. The site is of rectangular shape and it extends over an area of 0.4594 hectares. This site has recently been developed to provide a four-bedroom bungalow (297 sqm), which is served by front and rear gardens.

2.0 Proposed Development

- 2.1. The proposal is for the retention of a proprietary waste water treatment system, the Tricel P6 and Sandcel 900, which has been installed in the aforementioned front garden. To facilitate its installation, the ground level of this garden was raised slightly. This system is operational, and it serves the applicant's bungalow.

3.0 Planning Authority Decision

3.1. Decision

Refusal for the following reason:

It is considered that the proposed connectivity of the permitted house on this site to the public sewerage system is an integral component of the sustainability of the development of a house at this location on the edge of the town of Killorglin. Having regard to the provisions of the Kerry County Development Plan 2015 – 2021, and the available connectivity of the development on the site to the Killorglin public sewerage system, it is considered that the provision of a private effluent treatment system to serve the needs of the permitted house is unnecessary, would contribute to the further proliferation of private

effluent treatment systems at this edge of town location, and would, thereby, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Environment: No objection, subject to a maintenance condition.

3.2.2. Other Technical Reports

- TII: No observations.

4.0 Planning History

- 15/935: Demolish existing dwelling house + Construct a new dwelling house in its place: Permitted, subject to 14 conditions, including the following one:

14. The development shall be connected to the public water supply and public sewerage system to the satisfaction of Irish water.

No development shall commence until such time as the developer has obtained a Connection Agreement from Irish Water for the provision of water and sewerage services necessary to enable the proposed development.

Reason: In the interest of public health.

- 17/751: Install a proprietary waste water treatment system and ancillary site works: Refused at appeal (ABP-300286-17) for the same reason as the reason given for the refusal of the current application.
- U123/18: Warning letter served re. non-compliance with condition 14.

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 an area that is zoned “Rural General”. Under Section 13.2 of the Plan’s Chapter entitled “Development Management Standards and Guidelines”, Sanitary Services and Wastewater Treatment Systems are addressed.

- In relation to the former, “Where public services are available (or likely to be), the development will be required to be connected to these services.”
- In relation to the latter, “All on-site wastewater treatment systems for single houses shall be designed, installed and maintained in accordance with the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (2009).”

5.2. Natural Heritage Designations

- Castlemaine Harbour SAC and pNHA (site code 000343)
- Castlemaine Harbour SPA (site code 004029)

5.3. EIA Screening

Under Items 11(c) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where a wastewater treatment plant with a capacity of greater than 10,000 PE would be installed, the need for a mandatory EIA arises. The proposal is for the retention of a proprietary wastewater treatment system, which serves a household wherein the maximum number of people would be six. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall far below the relevant threshold of 10,000 PE, 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

- The site lies in a rural location outside the town of Killorglin.
- The site thus shares the same status as neighbouring housing sites, which are served by wastewater treatment systems.
- Connection to the public sewer is prohibitive due to the cost involved and an impasse with an adjoining landowner over the laying of a pipe.

- The public sewer is 290m¹ away and so “connectivity” cannot be reasonably considered to exist.
- The agent undertook the site characterisation exercise in compliance with the relevant EPA Code of Practice. The results of this exercise were supported by the Planning Authority’s Environment consultee. The wastewater treatment system recommended has been installed.

6.2. Planning Authority Response

The Planning Authority comments as follows:

- The applicant’s case was previously rejected by the Board, due to condition 14 attached to permitted application 15/935, which was considered to be a key environmental factor.
- The applicant’s site characterisation exercise is accepted.
- Notwithstanding the Board’s decision the applicant proceeded to install the wastewater treatment system. The refusal of the current application is consistent with this decision.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP, the planning history of the site, 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) Planning policy and planning history,

¹ This figure appears to comprise c. 260m along the L-11731 and c. 30m within the site.

- (ii) The proposal, and
- (iii) Screening for AA.

(i) Planning policy and planning history

- 7.2. The CDP shows the site as lying within an area that is zoned “Rural General”. Chapter 13 of this Plan addresses “Development Management – Standards and Guidelines”. Within this Chapter, wastewater is addressed under Section 13.2, entitled “Development Standards/General”, and under Section 13.4, entitled “Standards for Residential Development in Rural and Non-Serviced Sites”. Under the former Section, the scenarios envisaged are ones “Where public services are available (or likely to be), the development will be required to be connected to these services” whereas, under the latter Section, the scenarios envisaged are ones within which “a connection to the public sewerage system is not available”.
- 7.3. The site is located beyond the town of Killorglin and it has been developed to provide a dwelling house, which forms an addition to a cluster of five other older dwelling houses on either side of the L-11731. These other dwelling houses are served by their own wastewater treatment systems.
- 7.4. To the east of the site, the L-11731 joins the N70. Adjacent to the junction thus formed, lies the end of the public sewerage system at a horizontal distance of c. 260m from the site. (The site is elevated above the level of the said junction, too, by c. 20m).
- 7.5. Under application 15/935 for the development of the site to provide a dwelling house, the applicant proposed that a new sewer be run underneath the L-11731 to the aforementioned end of the public sewerage system. Drawings were submitted of this new sewer (drawing no. 01-1505-02). This application was permitted, subject to a number of conditions, one of which required that the development be connected to this public sewerage system and that a Connection Agreement in this respect be obtained from Irish Water prior to the commencement of development.
- 7.6. The applicant subsequently made an application, 17/751, to install a proprietary wastewater treatment system. He explained the impetus for this application was the “enormous and prohibitive cost of connection to the public sewer”. A third party appeal ensued and the Board refused this system on the basis that connectivity to the public sewerage system was available and so a proprietary wastewater

treatment system was unnecessary and it would contribute to the proliferation of such systems at the edge of Killorglin.

- 7.7. Nevertheless, the applicant has installed the previously refused proprietary wastewater treatment system and he now seeks retention permission for the same.
- 7.8. In making the current appeal, the applicant draws attention to the location of the subject site beyond Killorglin and in a cluster of other dwelling houses that are served by individual wastewater treatment systems, too. He also draws attention to the distance between this site and the public sewerage system, which accompanies the N70 rather the L-11731 that passes the site. He, therefore, contends that connectivity between it and this system cannot reasonably be said to exist.
- 7.9. I note that there appears to be no material change in planning circumstances since the Board determined the previous application/appeal and that then, as now, cost *per se* does not constitute a material planning consideration. I note, too, that the CDP does not elaborate on what constitutes the availability of a public sewerage system when significant distances are involved in connectivity. I anticipate that the Board previously considered whether or not 260m was a reasonable distance and determined that it was. The current appeal provides an opportunity for the reasonableness of this distance to be considered again.
- 7.10. I conclude that, in the light of planning policy and the planning history of the site and in the light, too, of a consistency in material planning circumstances with respect to the site, the current proposal warrants objection in line with that raised to its predecessor.

(ii) The proposal

- 7.11. The proposal would entail the retention of an installed wastewater treatment system in the front garden to the applicant's dwelling house. This system is a Tricel P6 and it is accompanied by a Sandcel 900 tertiary treatment unit. The applicants have submitted photographs of the construction of this unit, which entailed the addition of successive layers of sand and pea gravel within a box, and cross sections depicting the system and the unit. They have also submitted documentation, which testifies to the successful installation of this unit.
- 7.12. Under application 17/751 and the subsequent appeal, the suitability of the site for a proprietary wastewater treatment system was discussed. While the reporting

inspector questioned its suitability and drafted a reason for refusal accordingly, the Board did not concur with him in this respect.

7.13. During my site visit, I observed that the front garden had been raised in level, as shown on the aforementioned cross sections. This garden is thus elevated above the adjacent local road to a greater degree than hitherto. I also observed that the wastewater treatment system appeared to be operating satisfactorily insofar as there was neither ponding in its vicinity nor any associated odour.

7.14. I conclude that the proposal appears both to have been installed and to be operating in a satisfactory manner.

(iii) Screening for AA

7.15. The site is neither in nor near to a Natura 2000 site. The nearest such sites are the Castlemaine Harbour SAC and SPA. I am not aware of any hydrological or other source/pathway/receptor route between the subject sites and these Natura 2000 sites. I, therefore, consider that the proposal would be unlikely to significantly effect the Conservation Objectives pertaining to these sites.

7.16. Having regard to the nature and scale of the proposal and the proximity to the nearest Natura 2000 sites, 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 the proposal be refused.

9.0 Reasons and Considerations

It is considered that the originally proposed connectivity of the permitted dwelling house to the public sewerage system is an integral component of the sustainability of the development of this dwelling house on the subject site, which is located at the edge of the town of Killorglin. Having regard to the provisions of the Kerry County Development Plan 2015 – 2021 and the available connectivity of the dwelling house to the Killorglin public sewerage system, it is considered that the proposed retention of a proprietary wastewater treatment system to serve the needs of the permitted house is unnecessary, contributes to the proliferation of proprietary wastewater treatment systems at this edge of town location, and so is contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

30th July 2019