



An
Bord
Pleanála

Inspector's Report ABP 304785-19

Development	(a) Construct outbuilding for use for meditation and family congregation (b) Retain groundworks carried out on site and retain dwelling.
Location	Cappagh, Killarney, Co.Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/1039
Applicant	Ben Nash
Type of Application	Permission & retention permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Alan Horgan
Observer(s)	None
Date of Site Inspection	16/09/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The overall site which has a stated area of 4.2 hectares is accessed via a long driveway at the end of a minor cul-de-sac road which skirts around Lough Guitane in the townland of Cappagh c.10km to the south-east of Killarney.

There is a dormer dwelling with detached garage and store on the site which is setback approx. 600 metres from the southern shore of Lough Guitane. The northern portion of the site is flat with levels increasing steeply in an southerly direction. Earthworks have been undertaken c. 90 metres to the south of the existing dwelling with a level bench cut into the hill.

The Cappagh River bounds the site to the east with excavated stone being stored in piles along same.

The nearest dwelling to the site is that on the shore of Lough Guitane c. 420 metres to the north (also accessed from the driveway) which appears to be in the ownership of the applicant.

2.0 Proposed Development

The application was lodged with the planning authority on the 25/10/18 with further plans and details received 08/05/19 following a request for further information dated 17/12/18.

The proposal entails:

- (1) Retention of existing earthworks to the south of the dwelling covering a stated area of 1100 sq.m.
- (2) Construct a 282 sq.m. detached structure for purposes ancillary to the main dwelling on the area of the above earthworks. The structure is to be approx. 93 metres from the main dwelling. The main rooms within are labelled family room, meditation room, study and treatment room. The building is contemporary in design with a height ranging from 5.5 m to 7.5 metres. The latter provides for a double height to the family room. The external finishes are to be a mix of glazing and stone with a green roof. The structure is to connect into the wastewater treatment system that serves the main dwelling.

(3) Retention of dwelling as constructed within revised site boundaries.

The application is accompanied by:

- Design Statement
- Photomontages
- Landscape Plan
- Survey of the existing waste water treatment system.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 8 conditions including:

Conditions 1 & 2: Dwelling and ground works to be retained in accordance with plans and particulars.

Condition 4: Roof shall be covered in grass. Proposed cladding shall be natural stone and shall match the colours in the surrounding landscape. Finished floor levels to be per section drawing received.

Condition 5: Any external lighting to be cowled and shall not be visible from any point 100 metres from the light.

Condition 6: Landscaping and screening to be carried out within 1st growing season following construction of the outbuilding.

Conditions 7 & 8: Building not to be used as residential accommodation. Dwelling and building to remain as one integral unit.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report notes that there are two dwellings owned by the applicant in proximity to each other on the shore of Lough Guitane in a remote location with no immediate neighbours. Permission has been granted for a large extension to the dwelling under 17/619. Development has not commenced on same. The

earthworks to be retained are considerable in scale and nature. The fact that little vegetation has grown back makes the works more significant. Unlike the dwellings the proposed building has regard to the landscape and despite its location on the elevated site, will not be visually obtrusive. Once vegetation is reinstated correctly the visual impact will be lessened considerably. A request for further information on the waste water treatment system, track treatment and intended use of the building recommended. The 2nd report following further information notes that the landscaping proposals show the changes to the immediate area including the ramp up to the site and the levelled area around same will be suitably and sensitively landscaped. The building itself has been designed to integrate into the surrounding area. The adjacent dwelling is visible from some locations along the public road on the other side of the lake. The building may be visible at some locations across the lake but it is considered that the impact will be minimal. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

County Archaeologist notes no recorded monuments in proximity. No mitigation required.

Environment Section in a report dated 12/12/18 recommends further information on the existing wastewater treatment system on the site. The 2nd report following further information states there is no objection.

Biodiversity Officer states that following screening it is concluded that significant effects on the Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC have been ruled out.

3.3. **Prescribed Bodies**

Inland Fisheries Ireland notes that Cappagh River is the main salmonid spawning and nursery stream in the Lough Guitane catchment. It requires protection from polluting discharge and habitat interference. Any works which may give rise to polluting discharge to be managed effectively.

An Taisce expresses concerns regarding the quantum of development permitted to date, location in proximity to a major water source for the County, precedent set

should justification be accepted, impact on the landscape and impact on views from the walking path and tourism.

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 are comparable to those in the 3rd party appeal summarised in section 6 below.

4.0 Planning History

99/1048 – permission granted to demolish derelict dwelling and construct dormer dwelling and waste water treatment system.

17/619 – permission granted to retain existing house within revised site boundaries and permission for 4 buildings ancillary to the main dwelling.

19/117 – permission refused to demolish the existing house and construct a new dwelling and replace the waste water treatment system.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015

Chapter 12 addresses Zoning and Landscape

The site is within a landscape designated as being of Secondary Special Amenity. which is sensitive to development. Accordingly, development must be designed so as to minimise the effect on the landscape. Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area, as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings. Development will only be permitted where it is in accordance with the provisions of Chapter 3.3.2.

Section 12.4 - View and Prospects

Views and Prospects requiring protection have been identified and are indicated in Volume 3. It is not proposed that the protection and conservation of these views and prospects should give rise to the prohibition of development along these routes, but development where permitted, should not seriously hinder or obstruct these views and should be designed and located to minimise their impact.

Objective ZL-5 - Preserve the views and prospects as defined on Map No's 12.1, 12.1a – 12.1u. including along local road to the north of Lough Guitane.

5.2. Natural Heritage Designations

Part of the site is within the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365).

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd party appeal can be summarised as follows:

- In support of the application the applicant has stated that the properties he has in Cappagh are holiday homes.
- The area is designated as being of secondary special amenity on the shores of Lough Guitane. The applicant does not meet any of the criteria for development in such an area.
- The area is also of ecological importance and the lake is a water source for the County. This has not been considered in the works undertaken to date.
- In granting permission the planning authority has failed to identify which design it has given permission for as multiple designs were submitted.
- The visual impact of the building has not been fully assessed. It is well above the ridge line of the existing dwellings. It will be clearly seen from the surrounding areas including a protected view.
- The scenic amenities of the area are being eroded away by each successful application to construct one off buildings.

- An EIA has not been carried out.

Details of other property and development carried out by the appellant set out in the submission.

6.2. Applicant Response

The submission by HRA Planning on behalf of the applicant can be summarised as follows:

- The existing dwelling and boundaries have, in fact, been constructed in compliance with permission 99/1048. The planning authority instructed the applicant to apply for same advising that it was necessary to validate the planning application. It was possibly so as to provide comfort to the planning authority that the proposed structure and intended use would be expressly tied to a planning permission for the existing on-site dwelling.
- The purpose of the building is as described in the planning application which is proposed as space incidental to the dwelling. It is not intended as a stand alone dwelling. The applicant is not required to meet any specific requirements of the Development Plan in respect to residential development.
- The site is within a secondary amenity area with a designated view/prospect on the northern side of Lough Guitane. These provisions do not prohibit development. Whilst there are distant views from the northern side of Lough Guitane towards the appeal site the proposal would have a negligible effect on the character of the designated landscape and the view/prospect. As illustrated in viewpoints provided whilst the building is to the rear and at a higher level than the existing dwelling, it will have the benefit of natural screening from the landform and habitat. As viewed from the view/prospect the site is situated at a relatively low level in the landscape.
- The mono-pitched roof design with grass finish is intended to be sympathetic to traditional vernacular design whilst ensuring visual integration with the character of the landscape. Upon construction and maturity of the grass roof and with the final landscape of the site the proposal will not give rise to significant adverse effect on the receiving visual environment.

- In contrast to the site the area to the southwest of Lough Guitane has a steeper topography with a number of dwellings occupying more commanding and conspicuous visual positions within cleared grassland landscapes.
- The proposal is consistent with the provisions of section 12.3.1 and Policy ZL-4 of the Development Plan in relation to landscape designations and Section 12.4 in relation to views and prospects.
- AA Screening undertaken by the Council concluded that the proposal would not have significant effects on the nearest designated site. The proposal is consistent with policy NE-2 of the Development Plan.
- There is no evidence or rationale to warrant a sub-threshold EIA.
- The appeal submission makes reference to development works and other activities outside the remit and unrelated to the application.

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:

- Nature and extent of development
- Visual Impact
- Appropriate Assessment

7.1. **Nature and Extent of Development**

The site is accessed via a private road along the western shore of Lough Guitane with views both of the lake to the north and Eskduff, Bannaumore and Crohane mountains in addition to Cappagh Pass to the south and east. I note a 2nd dwelling

c.400 metres to the north of the site on the shores of Lough Guitane which would appear to be in the ownership of the applicant.

As per the public notices the proposal before the Board is for the retention of the dwelling as constructed on site within revised site boundaries and retention of groundworks on which permission is sought for a detached building to be used for purposes ancillary to the dwelling. As noted by the agent for the applicant and as extrapolated from the planning history file ref. no. 99/1048 the dwelling has been constructed in accordance with the said plans and details. I note that a detached garage and a further shed have been constructed within the curtilage of the dwelling. The Board is advised that there is an extant permission under ref. 17/619 for retention of the existing house within revised site boundaries and permission for four buildings in the curtilage providing for a dining room and store area, storage, meditation room and play room. The additional floorspace is stated to be 751 sq.m. I also note that permission was refused under ref. 19/117 for the demolition of the dwelling on the site and construction of a new dwelling with a stated gross floor area of 2997 sq.m. served by a replacement wastewater treatment system.

Relative to the two permissions referenced above the site boundaries in the current application have been extended to the south to encompass the area on which the detached building is proposed. It is to have a setback of c.93 metres from the dwelling. Due to the topography and elevated nature of the site relative to the dwelling a large level bench has been cut out of the hill on which the building is to be located. The levelled area is stated to be in the region of 1100 sq.m. An access to same has been developed with excavated stone being stored on the lower ground to the east alongside the Cappagh River which forms the boundary to the site.

The stated purpose of the building is to provide living space ancillary to the main dwelling. It is not intended as a separate dwelling unit. It is in this context that the proposal would be assessed, and should permission be granted, would be for such purposes only. As such it is not incumbent on the applicant to demonstrate compliance with the settlement location policy which would pertain to this area of secondary special amenity as set out in the current Kerry County Development Plan.

The building design for which permission is being sought is as per the plans and drawings accompanying the application. Whilst the design statement details the

alternative designs considered prior to the lodgement of the application they are clearly referenced as 'superseded'.

7.2. Visual Impact

The site is within a landscape designated as being of Secondary Special Amenity in the current County Development Plan. Such landscapes are considered to be sensitive to development. Whilst there is no presumption against development the plan requires that it be designed so as to minimise the effect on the landscape and to take account of the topography, vegetation, existing boundaries and features of the area.

The site of the building is elevated above the existing dwelling and has uninterrupted views of Cappagh Pass and surrounding mountains to the south and east with views, although limited, of Lough Guitane to the north. The proposed building with a stated floorspace of 282 sq.m. is of a contemporary design with a mono pitched roof with grass finish. I consider that the photomontages that accompany the application are a useful aid in assessing the potential visual impact of the proposal and, from my inspection, I submit that the greatest impact would be from views to the south.

Although not waymarked there appears to be a walking trail in the vicinity of the Cappagh Pass to the south. I consider that the proposed design and finishes which are to take due cognisance of the vegetation and stone features of the landscape will assist in limiting the impact.

From the north views are restricted to the vicinity of the associated dwelling. In view of the route of the private road serving the site which runs along the eastern shore of Lough Guitane views of the site are not available from same.

At a further distance I note that views of Lough Guitane and the surrounding landscape from the local road to the north of same are listed for protection. The said views are somewhat intermittent due to the existing roadside vegetation and housing development prevalent along same. Where open views are available the dwelling subject of the appeal and that to the north are discernible. In view of the elevated position of the site relative to the dwelling the new building would introduce another element in the views. Notwithstanding, in view of the dominance of the lake in the views, the relative distance of the site from the viewpoints and the

proposed design and finishes I do not consider that the proposal would constitute a material new addition as to warrant a refusal of permission on such grounds.

7.3. **Appropriate Assessment**

A juxtaposition of the site layout relative to the boundary of the Killarney National Park Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) shows that whilst the dwelling and detached garage/store are outside, the majority of the footprint of the proposed building is actually within the said designated site.

The qualifying interests for the European site are

- Oligotrophic waters containing very few minerals of sandy plains
- Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation
- Northern Atlantic wet heaths with Erica tetralix
- European dry heaths
- Alpine and Boreal heaths
- Juniperus communis formations on heaths or calcareous grasslands
- Calaminarian grasslands of the Violetalia calaminariae
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils
- Blanket bogs (* if active bog)
- Depressions on peat substrates of the Rhynchosporion
- Old sessile oak woods with Ilex and Blechnum in the British Isles
- Alluvial forests with Alnus glutinosa and Fraxinus excelsior
- Taxus baccata woods of the British Isles
- Kerry Slug
- Freshwater Pearl Mussel
- Marsh Fritillary

- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Salmon
- Lesser Horseshoe Bat
- Otter
- Killarney Fern
- Slender Naiad
- Killarney Shad

Detailed conservation objectives have been drawn up for the site the overall aim being to maintain or restore the favourable conservation status of the said habitats or species.

Assessment of Likely Effects

As noted above the majority of the new build is within the designated site. Excavation works have been undertaken entailing a level bench being cut into the hillside with excavated material being stored to the east immediately adjoining the Cappagh River. The site is upslope of the river which forms part of designated site. I note that the Council's Biodiversity Officer in her report referred to the works being outside the designated site and that no qualifying interests were present.

I note the email from Inland Fisheries Ireland to the planning authority which states that the Cappagh River is the main salmonid spawning and nursery stream in the Lough Guitane Catchment. It states that the watercourse requires protection from polluting discharge and habitat interference. Salmon is one of the qualifying interests of the designated site. The river flows into Lough Guitane. The conservation objectives state that the lake is likely to have habitat *Oligotrophic waters containing very few minerals of sandy plains* whilst a 250 metre buffer for Otter around the lake is also mapped. Both are qualifying interests.

Taking into consideration the proximity of the works to the river there is the potential for indirect effects from emissions during the construction phase affecting both

qualifying interests and water quality on which a number of the said qualifying interests are reliant.

I note that IFI recommends good site management practices be adopted including use of silt traps/interceptors to prevent discharge of silt/hydrocarbon contaminated waters to surface waters. As per the letter from Reeks Consulting Engineers accompanying the application the inclusion of silt traps and a catchment drain around the proposed development during construction is advised so as to prevent silt entering the river.

Whilst such measures would be considered to be best construction management practices to mitigate such concerns it would be reasonable to assume that such measures would not be required were the development to be located at a remove from the watercourse. They are therefore, in effect, mitigation measures. Screening for appropriate assessment must be without the benefit and consideration of such measures. To have due regard to same would be contrary to best practice. In the absence of an appropriate assessment potential significant effects must be ruled out without mitigation. Case law has also established precedent in this regard. On this basis therefore, I am not satisfied that the proposed development would not be likely to have a significant effect on the designated site having regard to its qualifying interests and should, therefore, be subject to an Appropriate Assessment. I recommend refusal of permission on this basis.

I would also submit that in view of the retention element of the application, namely the excavation works to the hillside, I consider that an application for substitute consent for this element of the proposal would be required.

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.

9.0 Reasons and Considerations

On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effects on European Site 00365 or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

Pauline Fitzpatrick
Planning Inspector

September 2019