



An
Bord
Pleanála

Inspector's Report ABP 306139-19

Development	Dwelling and associated works
Location	Lackabeg, Abbeydorney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/717
Applicants	John Michael Fitzgerald & Christine Buckley
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	John Michael Fitzgerald & Christine Buckley
Observer(s)	None
Date of Site Inspection	06/02/20
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 0.45 hectares, is accessed from a local road c. 1.5km to the south of Abbeydorney village and c. 7km to the north of Tralee. It is roughly rectangular in shape and is immediately adjoining the family dormer dwelling and farm yard which is served by an entrance and driveway that slopes up from the local road. The local road was noted to be relatively well trafficked. The 80kph speed limit applies.

The topography of the general area is undulating with the site and adjoining building at the top of a small hill that falls away on all sides.

The site straddles two fields. The northern and western boundaries of the northern most field are delineated by a sod and stone ditch and mature trees with a line of trees delineating its southern boundary. A shed and the existing family dwelling bound the site to the east with the farm building to the east of same.

2.0 Proposed Development

The application was lodged with the planning authority on the 09/07/19 with further plans and details submitted 01/10/19 following a further information request dated 29/08/19. A further submission dated 16/10/19 confirmed that the poles erected on site to reflect the ridge heights of the dwelling are to the planning authority's requirements in terms of colour.

The proposal is for a part two storey L-shaped dwelling with a stated floor area of 278 sq.m. and ridge height of 7.975 metres. A 22 sq.m. detached shed is also proposed.

As per the Site Characterisation Form which was amended by way of further information a depth of 0.7 metres to bedrock was recorded. A T value of 9.67 with a P value of 11.08 were calculated. A wastewater treatment system with partially raised tertiary sand polishing filter is proposed.

Water supply is from public mains.

The existing site access is to be widened. From same a new driveway serving the dwelling is proposed.

One of the applicant's is the landowner's son and is involved in the dairy farm. He resides in the family home.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above described development for one reason relating to visual obtrusiveness and failure to integrate satisfactorily into the landscape. The proposal would result in a negative impact on the character of the landscape which is necessary to preserve as per county development plan objective ZL-1 and would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The *1st Planner's* report dated 27/08/19 states that due to the elevated location on a hill there is a concern regarding the potential visual impact of the proposal and that it may prove difficult to integrate successfully into the landscape. The comments from the Site Assessment Unit (summarised below) noted. A request for further information recommended. The *2nd report* dated 08/11/19 notes that whilst the existing trees in the former haggard provide some visual screening they are of a substantial age with those on the southern and western boundaries somewhat sparse, widely spaced and unhealthy. This does not inspire confidence in the long term ability of this vegetation to effectively screen the proposal. The taller buildings in the existing farmyard cluster are located slightly behind the skyline as viewed from the west and south-west and therefore appear to be lower than the roof ridge of the proposed house. This farmyard layout also diminishes any potential clustering effect that can be claimed to exist as the site is an extension of and not part of the existing cluster. The proposed location on the crest of a hill is not considered to be the optimal location on the farm landholding. There appears to be better options. A refusal of permission for one reason recommended.

3.2.2. Other Technical Reports

Site Assessment Unit in a report dated 26/07/19 recommends further information. The pictures of the trial hole do not back up the information in the site characterisation form Part 3.2. A reassessment of the design recommended. The 2nd report dated 10/10/19 following further information states there is no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water has no objection subject to conditions.

Note: Reference made to a report from Water Services in the Planner's report appears to refer to the said report from Irish Water.

3.4. Third Party Observations

Representation on behalf of the applicants on file.

4.0 Planning History

Reference is made in the appeal submission to permission granted for an agricultural shed under ref. 04/3442.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015

RS-1 ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG) and the Development Guidance document of this plan.

RS-2 require the design of rural housing to have regard to the 'Building a House in Rural Kerry: Design Guidelines' (KCC 2009).

RS-4 ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.

RS-5 ensure that future housing in all rural areas complies with the EPA's 2009 Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses.

RS-6 ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

The site is located within an area designated as being a Stronger Rural Area.

RS-10 facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations.

The site is within an area designated for Rural General. This constitutes the least sensitive landscape from a visual impact point of view and has the ability to absorb a moderate amount of development without significantly altering its character.

Section 12.2.1 – it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

ZL-1 protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to peoples' lives.

5.2. Natural Heritage Designations

The nearest designated site is Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) approx. 2.3 km to the east.

5.3. Environmental Impact Assessment

Having regard to the nature and extent of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by MOC Architects on behalf of the applicants against the planning authority's notification of decision to refuse permission can be summarised as follows:

- The applicant is the son of the landowner and runs the farm with his father who has a disability. He has a fundamental need to live adjacent to the farm buildings and to his father to provide assistance.
- The site is located within an area zoned Rural General which constitutes the least sensitive landscape and has the ability to absorb a moderate amount of development without significantly altering its character.
- The existing farm house and farm buildings are visible from the local road particularly along the western/south-western approach. The existing trees of the haggard screen the existing development. There is an established pattern of development on the site.
- A pre-planning meeting was held in which the current location was preferred forming part of and augmenting the existing cluster of development availing of existing screening.
- Alternative locations were considered but having regard to the restrictions of siting a dwelling close to the treatment facilities for the agricultural sheds, not interfering with working flow process in the farm yard, the site assessment of the lands in the lower, wetter areas and the visual impact of a dwelling as a stand alone development, the proposed location was deemed the most advantageous both from a development and visual point of view and in terms of the practical and functional need for the applicant to be near the farmyard and his father.
- The layout, house design and height were carefully considered. It has regard to the height, scale and siting of existing development. The shape of the dwelling is deliberate in its form to minimise the bulk and scale providing an appropriate massing arrangement for its rural location

- It is intended to augment the existing hedgerows and trees. The concerns about the health and state of the existing hedgerow and trees can be dealt with by a robust landscaping plan.
- The dwelling will not be seen in isolation but will be seen within the back drop of the existing cluster of buildings.
- Whilst the two storey element is 7.95 metres it is not the height of the entire building. It is stepped with 3 different heights and 3 different roofs so as to minimise the scale of the building.
- It is frustrating that the Council's consideration of visual impact of development in the countryside varies with the type of use of development. The impact of agricultural sheds is not prioritised yet dwellings are forensically assessed.
- It is not considered that it would set an undesirable precedent. Alternative options raised including alternative locations remote from the existing cluster of development would set an undesirable precedent.

6.2. Planning Authority Response

The response, in addition to reiterating a number of points set out in the Planner's report as summarised above, notes:

- There is no evidence of any structure erected on lands to the west of the existing farmyard cluster.
- The opinions given at the pre planning meeting were without prejudice.
- The taller buildings are located behind (or partially behind) the skyline as viewed from the public road from the west and south-west and therefore appear considerably lower than the highest roof ridge of the dwelling.
- The layout of the farmyard also diminishes any potential clustering effects claimed to exist as the site is an extension of and not part of the existing cluster.
- The existing trees and bushes are in poor condition and are incapable of effective screening. Experience has shown that conditions for implementing

landscaping/screening are difficult to police in practice and have to be considered to be of strictly limited value to achieve any desired level of visual screening.

- The site is within an area zoned Rural General where the default land use is agriculture not housing. The provisions in the Exempted Development Regulations for many classes of agricultural developments/buildings further underlines this position.
- The negative precedent referred to is one of constructing a new dwelling on an exposed and prominent location in a rural area. The alternatives suggested would be to the south or east of the farmyard complex. Such locations are not considered to set a negative precedent for rural houses.

6.3. **Observations**

None

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings.

- Compliance with settlement location policy
- Siting and Visual Impact
- Other Issues
- Appropriate Assessment

7.1. **Compliance with settlement location policy**

The application is for a part two storey dwelling and effluent treatment system located within an area designated as a ‘Stronger Rural Area’ in the current County Development Plan. Such an area is identified as generally having a stable population level that is supported by a traditionally strong rural/agricultural economic base. The key challenge is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas. Objective RS-1- states that it is an objective to facilitate the

provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised.

One of the applicants is stated to be the landowner's son, resides in the family home and is employed in the running of the family dairy farm. The landholding has an approx. area of 29-30 hectares. I consider that the applicant can be considered to comply with the provisions of the current County Development Plan's settlement location policy. However, as noted in objective RS-1 the acceptability of the proposal in terms of settlement policy is predicated on other planning and environmental considerations being satisfied.

7.2. Siting and Visual Impact

The site, whilst not within an area designated as being of scenic amenity in the current county development plan, has an innate quality and has visual merit in its own right. As per the County Development Plan the site is within an area classified as Rural General which is considered to be the least sensitive landscape, and which has the ability to absorb a moderate amount of development without significantly altering its character.

The Kerry Rural Design Guide: Building a House in Rural Kerry, to which regard must be had as per objective RS-2, places an emphasis on the importance of design within the landscape and of siting of development to minimise visual intrusion. These principles are reiterated in section 12.3.1 of the development plan which states that it is important that development in such areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

The family dwelling and associated farmyard and buildings are located on a small hill. The site of the dwelling is located immediately to the east of the dwelling within a field which was previously used as a haggard screened by way of hedgerow boundaries and tall trees. The site is evident in views when travelling from the north due to the relatively straight alignment of the local road and topography. This is not the case when travelling from the south due to the road alignment and screening offered by roadside hedgerows. Views are available in proximity to the entrance. I submit that the prominence of the site is somewhat accentuated by the tall trees that

bound the site which draw the eye. In all views the large agricultural building to the east of the existing dwelling is evident.

The agent for the applicants in the appeal sets out the justification for the proposed siting. In summary alternative locations within the landholding were considered but having regard to the restrictions of siting a dwelling close to the treatment facilities for the agricultural sheds, not interfering with the working flow process in the farm yard, the site assessment of the lands in the lower, wetter areas and the visual impact of a dwelling as a stand alone development the proposed location was deemed the most advantageous from a development and visual point of view in terms of clustering of development and from a practical and functional need for the applicant to be near the farmyard and his father who requires assistance.

The dwelling entails a part two storey part single storey L-shaped design with a mix of pitched and flat roofs which the agent for the applicant considers assists in breaking down its scale and massing. Whilst I consider the design is acceptable and incorporates characteristics of vernacular architecture within a modern idiom I submit that it reads largely as a two storey dwelling when viewed from the north and south with a ridge height of 7.95 metres. The orientation and fenestration is so as to avail of views

Profile poles were on site on day of inspection and were not discernible when viewed from the local road, notably from the north due, in large part, to the existing screening afforded the site. It is proposed to retain the existing screening save as to allow for the new driveway and to facilitate the installation of the effluent treatment system. Whilst the planning authority consider the screening to be somewhat sparse it is effective and I consider that robust augmentation would assist in strengthening same notwithstanding the planning authority's concerns as to the condition of the trees.

I would also submit that alternative locations within the holding availing of road frontage (without prejudice to road safety considerations) would be no less visible in many of the views available and would not have the benefit of existing screening.

I therefore consider the site location and design to be reasonable and that it complies with the design principles as set out in the Kerry Rural Design Guide and the development plan in terms of integration into the landscape. Contrary to the

view as expressed by the planning authority the proposal, coupled with that existing, would read as a cluster of buildings which, in my opinion, is preferable to a one off dwelling with road frontage elsewhere on the holding.

7.3. **Other Issues**

The existing entrance serving the family home and farm buildings is to be upgraded so as to provide for 80 metre sight lines in each direction. This arrangement is acceptable and whilst the road was noted to be relatively well trafficked on day of inspection the additional vehicular movements that would arise would not give rise to concerns in terms of traffic safety.

The dwelling is to be served by a proprietary effluent treatment system and partially raised sand polishing filter to be located downslope of the existing and proposed buildings.

Appropriate Assessment – Screening

The nearest designated site is Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) approx. 2.3 km to the east. Having regard to the nature and scale of the proposed development and the distance from the said designated site no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations, subject to conditions.

9.0 Reasons and Considerations

Having regard to the site location in proximity to the family home and farm buildings availing of existing boundary screening, and to the design of the proposed dwelling, it is considered that, subject to compliance with the conditions set out below, the proposed development would not form an obtrusive feature in the landscape at this location, would not seriously injure the visual amenities of the area and would be adequately absorbed and integrated into the landscape. The proposed development would, therefore, be in accordance with objectives RS-2 and RS-4 of the current Kerry County Development Plan and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 1st day of October 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant.
Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the

Planning and Development Act, 2000 to this effect.

- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area.

- 3. (a) 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.
- (b) The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

- 4. (a) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
- (b) Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority 1st day of October 2019, 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.
- (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.
- (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 dwellinghouse 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.
- (d) Surface water soakways 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.

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.

Reason: In the interest of public health.

6. 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:
- (a) Drawings to scale of not less than 1:500 showing –
 - (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.
 - (ii) planting of indigenous deciduous trees to augment the existing planting along all site boundaries.
 - (b) 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.
 - (c) A timescale for implementation which shall provide for the planting to be completed before the dwelling/building is first made available for occupation.

Species to be used shall not include either cupressocyparis x leylandii or grisellinia. 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.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid

prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2020