



An
Bord
Pleanála

Inspector's Report ABP-306237-19

Development	To construct a dwelling house, domestic garage, mechanical waste water treatment unit with intermittent filter and polishing filter, form new site access and access road at existing agricultural access, together with all associated site works.
Location	Crohane, Fossa, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/232
Applicant(s)	Fiona O'Connor
Type of Application	Permission
Planning Authority Decision	Grant, subject to 16 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Crohane Residents Association
Observer(s)	None
Date of Site Inspection	13 th March 2020

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 6.2 km to the NW of Killarney town centre and 2.3 km to the NNW of the junction in the settlement of Fossa between the N72 and the R563. This site lies in an area of rolling countryside, which rises from the northern shore of Lough Leane to the south and which includes areas of forestry. The R563 between Fossa and Milltown passes through this countryside on a NW/SE axis. Portions of this regional road are accompanied by ribbon development and there are one-off dwelling houses elsewhere off the accompanying local road network.
- 1.2. The site itself is situated towards the top of a south facing slope, which is the subject of appreciable gradients. It is accessed from the east via a farm track from the local road network in Crohane on the NE side of the R563. This site is of rectangular shape and it extends over 0.4 hectares. The site is in agricultural use for grazing and it is accompanied on its eastern side by an existing bungalow, beyond which lies a cluster of dwelling houses and outbuildings at the head of a local road.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a single storey, three-bed, dwelling house (341 sqm) and an accompanying domestic garage. This dwelling house would be sited centrally within the site. It would be composed of rectangular forms under double pitched roofs. There would be a variety in the size and in the arrangement of these forms in relation to one another. Likewise, different finishing materials would be specified.
- 2.2. The proposed dwelling house would be accessed by means of the farm track to the east, which would be upgraded for this purpose. It would be served by the public water mains and foul water would be handled by means of an on-site mechanical waste water treatment unit with an intermittent filter and a polishing filter.
- 2.3. The proposal was revised under further information. Thus, the driveway, which would have lapped around to the rear of the dwelling house, would now serve the front of the dwelling house, and the finished levels of this dwelling house would be lower, i.e. from 102 – 102.6m OD to 100.65 – 101.25m OD.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted subject to 16 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was requested as follows:

- Sight poles to be erected to depict the gable end ridge heights of the proposed bungalow,
- To reduce the impact of the proposed bungalow on the existing one to the east, its finished floor levels to be lowered and E/W cross section depicting both bungalows to be submitted, and
- As site is in a “Stronger Rural Area”, applicant to demonstrate her links to the immediate area.

3.2.2. Other Technical Reports

- Irish Water: No objection: standard notes + public water mains is 200m away and so applicant will need to obtain private landowners’ permission to lay a new pipe to it under private road.
- Kerry County Council:
 - Environment (Site Assessment Unit): Conditions requested.

4.0 Planning History

Site

- Pre-application consultation 5590 held on 19/09/18.

Adjacent site

- 96/546: Bungalow and septic tank: Permitted at appeal.

- 07/2665: Extensions to either side of the bungalow: Permitted.

5.0 Policy and Context

5.1. Development Plan

Map 3.1 of the Kerry County Development Plan 2015 – 2021 (CDP) shows Rural Area Types. This Map shows a Rural Area under Strong Urban Influence around Killarney set within a Stronger Rural Area. The site lies within this latter area.

Map 12.1j of the CDP, entitled “Amenities/Views and Prospects”, shows the settlement boundary extending around Fossa to the south of the site. This Boundary is continuous with the town boundary of Killarney to the east. To the north of it there is a swath of land, which is designated secondary special amenity and to the south and west there is a swath, which is designated primary special amenity. The site itself is shown as lying in an area designated rural general.

5.2. Natural Heritage Designations

- Killarney National Park, Macgillycuddy’s Reeks and Caragh River Catchment SAC (000365)
- Killarney National Park SPA (004038)
- Castlemaine Harbour SAC (000343)

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 – 2019, where more than 500 dwelling units would be constructed the need for a mandatory EIA arises. The proposal is for the development of 1 new build dwelling unit. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant threshold, 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

Visual amenity

- The site is on the summit of a small hill and so highly visible from within the surrounding area and further afield, e.g. the Prime Special Amenity Areas (PSAAs) of Tomies Hill and Carrauntoohil.
- The CDP recognises the importance of PSAAs and so it seeks to protect them. Under the proposal, a new intrusive scar on the landscape would be introduced to the detriment of visual amenity.
- The proposal would effectively replicate the intrusiveness of the existing bungalow to the east: Had the two bungalows been proposed at the same time would the Planning Authority have been in favour of them?

One-off housing

- Policy ZL-3 of the CDP states “Determine the zoning of lands in rural areas having regard to the sensitivity of the landscape as well as its capacity to absorb further development.”
- The private road to the site has gone from serving 3 farming families and 2 farm labourers cottages to serving 15 or more families. As a single lane sub-standard road, it cannot absorb any more traffic.

Ground water run-off and percolation

- Bedrock lies near the surface and so, in times of heavy rain, surface water runs over the ground to a nearby river, which rapidly swells. Thus, the distance between the percolation area and this river is effectively shortened with adverse implications for the transmission of impurities.

The appellant raises no objection in principle to the applicant residing in the locality: It's the site that has been selected that it takes issue with.

6.2. Applicant Response

Bona fides of the appellant

- The existence of an entity “The Crohane Residents Association” is questioned, e.g. no names and addresses of members are stated.
- While the two letters submitted at the application stage bore the heading of the aforementioned Residents Association, both were signed by Mattie Cronin and the address cited was his own one. By contrast, the appeal submission is expressly made “for and on behalf of” this Association and, while the same address is cited, it is on a “care of” basis. The appellant, therefore, questions whether the appellant is the same person/entity as the objector and so she requests that the Board dismiss the appeal, under Section 138(1)(a)(ii) of the Planning and Development Act, 2000 – 2019, as being frivolous and a delaying tactic.

Visual amenity

- Attention is drawn to the Rural General designation of the site, wherein there is a higher capacity for development to be absorbed than under other designations. The proposed dwelling house would be visible within a landscape context that comprises an existing cluster of dwelling houses to the east and against a hillside backdrop.
- The design of the proposed dwelling house would comprise a low height and traditional forms and materials, which would be arrayed in a manner that would relieve the massing of the dwelling house and thus minimise its visual impact.

“One-off house”

- The proposed dwelling house would accord with the requirements of the CDP for one-off rural houses.
- The applicant is an intrinsic member of the local community by virtue of the fact that the site is in her mother’s ownership and she is the Assistant Principal of Fossa National School, where she has taught since 2002.

Ground water run-off and percolation

- While the appellant critiques the site characterisation exercise that was undertaken, no technical support for the same had been submitted.

- The said exercise was undertaken by a suitably qualified expert in accordance with EPA guidelines. Confirmation is also provided that the revisions to the proposal made under further information have no implications for the proposed WWTS and percolation area.

6.3. **Planning Authority Response**

- Visual amenity: Attention is drawn to the Rural General designation of the site, the backdrop provided by the hillside beyond it, and the lowering of the finished floor level of the proposed dwelling house under further information.
- Absorption of new development: Attention is drawn in this respect to absence of objection from the appellant to comparable applications 19/712 & 19/713.
- Stronger Rural Area designation: The applicant, as the daughter of the landowner, meets the relevant criterion under this designation.
- Proposed WWTS: This was evaluated by the Council's Site Assessment Unit and found to be in order.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, 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) Legalities,
- (ii) Rural Settlement Policy,
- (iii) Landscape and visual impacts,

- (iv) Traffic and access,
- (v) Water, and
- (vi) Stage 1 Screening for AA.

(i) Legalities

- 7.2. The applicant has raised a series of questions relating to the appellant and its self-identification as “The Crohane Residents Association”.
- 7.3. I note that two letters were submitted at the application stage with the said Residents Association in the heading and Mattie Cronin’s signature at the foot of the page. The Planning Authority interpreted the relationship between the Residents Association and signatory as being one wherein the Residents Association was “care of” Mattie Cronin. I note, too, that, while the appeal submission bears no heading, underneath Mattie Cronin’s signature the following phrase appears “For and on behalf of the Crohane Residents Association”.
- 7.4. I consider that a comparison of the above differing terminology does not suggest that any material change in the relationship between the Residents Association and the signatory has occurred.
- 7.5. The appellant requests that the Board exercise its discretion, under Section 138(1)(a)(ii) of the Planning and Development Act 2000 – 2019, to dismiss the appeal on the grounds that it is frivolous and a time delaying tactic. I have examined the grounds of this appeal and I consider that, as they raise matters that are material planning considerations, these grounds cannot reasonably be described as frivolous. Likewise, there is no evidence that simply a delay is being sought in the final grant of permission.
- 7.6. I conclude that there are no legal impediments to the Board assessing/determining the application/appeal in the normal manner and there are no grounds upon which to dismiss the appeal under Section 138(1)(a)(ii) of the Act.

(ii) Rural Settlement Policy.

- 7.7. National Policy Objective (NPO) 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 6.2 km of Killarney town centre, it 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.

7.8. In a comparable situation, the Board, under ABP-303582-19, adopted the former NSS designation rather than the CDP's as being the more relevant one. I will thus take this approach, too.

7.9. National planning guidelines address the question of candidature for a new rural dwelling house most recently under the aforementioned NPO 19, which states the following:

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment and elsewhere: In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.10. Thus, for an applicant to be a candidate for a new rural dwelling house in an area under urban influence, he/she must demonstrate an economic or social need to reside therein.

7.11. The applicant has submitted supplementary information in support of her candidature. Thus, she states that she is the sister of the landowner who owns the majority of the site and adjoining farmland (cf. drawing no. 888: 212). She also states that she is the Assistant Principal of Fossa National School, which lies 3.7 km from the site, whereas her present place of residence is 11 km away. Under further information, a letter of support from her Principal was submitted, which outlines not only the applicant's school-based activities, but wider community and sporting activities that she is involved in.

7.12. I note that the applicant is employed in Fossa National School, which lies within a recognised settlement that abuts Killarney to the east. Thus, her place of employment is in an urban area and so she is not therefore involved in a rural economic activity. I note, too, the sibling connection to the majority landowner of the

site. However, for the purposes of NPO 19, this connection does not fulfil the social need test.

- 7.13. I conclude that the site lies within the urban influence of Killarney and so the provisions of NPO 19 are applicable. The applicant has not demonstrated that she has an economic or social need to reside on the site and so she is not a candidate for a rural dwelling house thereon.

(iii) Landscape and visual impacts

- 7.14. The site is on a south facing slope towards the top of a local hillside, which is readily visible from the R563, which passes to the SW. It is accompanied by an existing bungalow to the east, which in turn is accompanied by a cluster of single storey and two storey dwelling houses further to the east, some of which appear on the skyline. The landscape between the R563 is composed of continuous open grassland rising from a stream that parallels the local road into the area from the regional road.
- 7.15. The proposed dwelling house would be a bungalow with a considerable footprint, i.e. 341 sqm. In order to provide a level area upon which to construct this dwelling house, a considerable amount of cut and fill would be required to be undertaken. The dwelling house itself would be single storey and it would be composed of traditional design forms, the arrangement of which in relation to one another and the variety of finishing materials selected, would serve to ease their perceived scale and mass. The proposed dwelling house would be accessed from the east. Originally, an existing farm track would have been upgraded for this purpose. However, under further information, this was revised to show the use of the farm track only once it has cleared the frontage to the residential property, which adjoins the site to the east. While this means of access would traverse lands within the applicant's brother's ownership, no details of how it would be formed have been submitted.
- 7.16. The appellant expresses concern over the visual impact of the proposal from high points such as Tomies Hill and Carrauntoohil to the south and the south west of the site. He also questions whether the proposed dwelling house would have been permitted, had it been proposed at the same time as the adjacent bungalow.
- 7.17. The applicant has responded by drawing attention to the location of the site within an area designated by the CDP as Rural General rather than either a primary or secondary amenity area. Within this area, development can be more readily

absorbed and in terms of the site itself it would be seen in relation to existing dwelling houses to the east. Furthermore, the design of the dwelling house in conjunction with landscaping would minimise its visual impact within views of the landscape.

- 7.18. The CDP's commentary on rural settlement includes a series of six objectives. One of these, RS-4, has a bearing on landscape and visual impact. It states, "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."
- 7.19. I consider that, whereas the long-range views identified by the appellant would not be significantly affected by the proposal, short/medium range views from the R563 and the local road network to the site would be thus affected. I am concerned that this proposal would extend the existing cluster of dwelling houses across the hillside in the direction of the regional road in a manner that would be highly visible. I am particularly concerned over the realism of landscape screening proposals for points forward of the proposed dwelling house, insofar as any meaningful screening would tend to conflict with views of the Macgillycuddy's Reeks. I am also concerned that revised access arrangements would entail earthworks to an extended portion of the hillside, which would lead to scarring and, in effect, duplication of routes across the same.
- 7.20. I, therefore, conclude that the conspicuousness of the proposal, and the extension of the existing cluster of dwelling houses to the east that it would represent, would militate against its absorption into the landscape and thus it would fail to protect the same under Objective RS-4. The visual amenities of the area would, likewise, be adversely affected.

(iv) Traffic and access

- 7.21. The proposal would entail the introduction of a dwelling house into the locality of the site and with it an additional household. Traffic generated by the same would use the existing local road network off the NE side of the R563.
- 7.22. The appellant expresses alarm at the increase in traffic on the said local road network, which has arisen over recent years. It expresses the view that the additional traffic arising would be too much for this network to accommodate.

- 7.23. During my site visit, I observed the local road network. It is of single lane form and, whereas it initially comprises two straight stretches separated by a double bend, thereafter, it becomes more convoluted, albeit over a short distance. I observed that the sightlines at the junction between this network and the regional road are good and, likewise, the sightlines at the proposed entrance/exit point to the means of access to the site are good. (The proposed site entrance would be laid out in a conventional manner with splayed walls and a vehicular refuge forward of gate pillars). I thus am of the view that the traffic likely to be generated by the proposal would be capable of being accommodated on the local road network.
- 7.24. I conclude that the proposal would not result in any significant traffic issues and that access arrangements from the local road to the site would be satisfactory.

(v) Water

- 7.25. The proposal would be served by the public water mains. Irish Water has raised no objection. Surface water would discharge to three soak pits and foul water would be handled by means of a WWTS, the Tricel Novo with Puraflo tertiary treatment and a polishing filter.
- 7.26. The applicant undertook a site characterisation exercise, which led to the recommendation of the aforementioned WWTS. This exercise recognised the existence of the out cropping of bedrock on the higher reaches of the site and indeed such rock was encountered at depths of 2.8m and 3m in the higher and lower trial pits. Nevertheless, the silt top-soil and sub-soil had T and P values of 10.36 and 11.42, respectively.
- 7.27. The appellant observes that, during periods of heavy rain, surface water run-off from the site heads downhill and into a stream. He therefore expresses concern over the likely effectiveness of the proposed WWTS under such conditions.
- 7.28. I note that the WWTS would be a tertiary one and so the discharge to the proposed polishing filter would be treated to a correspondingly high level. I note, too, that this filter would be designed to discharge to ground water and that any failure in this respect would be capable of being addressed by regular maintenance.
- 7.29. The aforementioned site characterisation is accompanied by a site layout map, which shows where the WWTS would be sited. While the applicant has confirmed that the WWTS would be compatible with the revised site layout of the proposal, the

said site layout map has not been updated to demonstrated as much. A comparison of the two indicates that the siting of two of the three soak pits in the vicinity of the WWTS may need to be altered to ensure that the handling of surface and foul water is not in conflict.

7.30. The OPW's flood maps do not show the site as being at risk of any identified flood risks.

7.31. The proposal would raise no insurmountable water issues.

(vi) Stage 1 Screening for AA

7.32. The site is neither in nor near a Natura 2000 site. I am not aware of any source/pathway/receptor route between this site and the nearest such sites. Accordingly, no Appropriate Assessment issues would arise.

7.33. Having regard to the nature and scale of the proposal and proximity to the nearest European site, 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 refused.

9.0 Reasons and Considerations

1. The site of the proposal is located within an "Area Under Strong Urban Influence" as set out in the Sustainable Rural Housing Guidelines. In addition, under National Policy Objective 19 of the National Planning Framework, it is national policy to facilitate the provision of single housing in the countryside, in areas under urban influence, based on the core consideration of demonstrable economic or social need to live in a rural area and having regard to siting and design criteria and the viability of smaller towns and rural settlements.

Having regard to the location of the subject site, within the catchment of Killarney and proximate to the smaller settlement of Fossa, and also having regard to the information submitted by the applicant as to her place of work, which is in the settlement of Fossa, and the absence of any information of a social need that may

require her to reside on the site, the Board is not satisfied that the applicant has demonstrated an economic and social need to live at this specific rural location, or that the applicant's housing needs could not be satisfactorily met in a smaller town or settlement.

Accordingly, to permit this proposal, in these circumstances, would contravene National Policy Objective 19 of the National Planning Framework and so be contrary to the proper planning and sustainable development of the area.

2. Having regard to Rural Settlement Objective 4 of the Kerry County Development Plan 2015 – 2021 and to the elevated and highly visible position of the site when viewed from the R563 and the associated local road network, it is considered that the introduction of the proposed dwelling house and its associated means of access would extend the cluster of existing dwelling houses to the east of the site westwards towards the regional road in a manner that would be conspicuous and which would fail to ensure that it is capable of being absorbed within the landscape. Consequently, the proposal would fail to protect the local landscape, as mandated by Objective RS-4 of the Development Plan, and it would be seriously injurious to the visual amenities of the area. The proposal would thus be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

9th April 2020