



An
Bord
Pleanála

Inspector's Report ABP-307155-20

Development	House and garage
Location	Murreagh, Ballydavid, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/164
Applicant(s)	Siobhán Ní Dhubhna & Labhras Ó Maidin
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Siobhán Ní Dhubhna & Labhras Ó Maidin
Observer(s)	Peigí Ó Mathúna
Date of Site Inspection	16 th July, 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.461 hectare site is located to the north of the small settlement of Baile na nGall in the Gaeltacht area of the Dingle Peninsula in County Kerry. It is approximately 10km north-west of Daingean Uí Chúis. The main section of the site to accommodate the proposed development forms part of a field that is set back from public road frontage to the east and is bounded by other fields. The easternmost section comprises the southern end of a field that has frontage onto the local road. Development in the vicinity mainly comprises of detached houses developed alongside and off the local road network.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a three bedroom, two-storey detached house with a stated floor area of 230.85 square metres. The structure would be of contemporary design and would consist of a mix of finishes including cedar cladding, natural stone, and black zinc wall cladding. The proposed garage would be detached with a stated floor area of 60 square metres and located to the east of the proposed house. Finishes are proposed to match those of the proposed house. The development would also include a new entrance onto the public road and a driveway flanked by timber post and rail fencing and existing boundary hedgerow. It would be served by a public watermain and public sewer.
- 2.2. Details submitted with the application included a letter from the applicant's brother permitting the making of the application, a letter from the principal of the applicant's former national school stating she attended the school from 1980 onwards, and a letter from Irish Water noting that connection to the water supply and sewer can be facilitated, subject to a valid connection agreement being out in place.

3.0 Planning Authority Decision

3.1 Planning Authority Decision

On 20th April 2020, Kerry County Council decided to refuse permission for the proposed development for two reasons relating to visual impact and rural housing need.

3.2 Planning Authority Reports

3.2.1 Planning Reports

The Planner noted the site is located to the north and outside of the settlement of Ballydavid/Baile na nGall in a relatively open and exposed field set back from the public road and within a scenic coastal location. Development plan provisions and reports received were noted. It was considered that the proposed development would lead to an undesirable extension of development northwards out of the settlement of Ballydavid into open and exposed undeveloped scenic lands, resulting in a negative visual impact. It was acknowledged that the site is on land zoned Secondary Special Amenity and it was stated that it is unknown where the applicant's family home is relative to the proposed site. It was noted that the applicants have stated they own their own dwelling and that it is possible that the proposed house would constitute the applicants' second house. Based on the information provided, it was considered that the planning authority is not satisfied that the applicants have demonstrated compliance with the rural settlement policy for the Secondary Special Amenity zone. A refusal of permission for two reasons was recommended.

3.2.2 Other Technical Reports

The Archaeologist noted the site of the proposed development is partly located within the zone of notification of a ringfort but considered there is sufficient distance between the monument and the proposed development. No mitigation was seen to be required.

The Biodiversity Officer noted the application is within the Dingle Peninsula SPA. Due to the nature and scale of the development, significant effects on the special conservation interests of the SPA were considered unlikely.

3.3 Prescribed Bodies

Irish Water had no objection to the proposed development.

4.0 Planning History

4.1 I have no record of any previous planning application or appeal relating to this site.

5.0 Policy Context

5.1 Dingle Functional Area Local Area Plan

Baile na nGall

The site lies to the north of and outside of the development boundary of the village of Baile na nGall.

Infrastructure

The Plan states that Baile na nGall is served by a septic tank which outfalls to the sea shore which is currently operating at capacity. It is stated that there are no immediate plans to upgrade or expand on sewerage facilities in the village. The village is served by a public water supply. The constraint on existing effluent treatment facilities is seen to be a limiting factor in the future development of the village in the short-term.

Urban Form

The Plan notes that extensive development of one-off housing has occurred on local roads in the vicinity of the village creating a haphazard development pattern which is unsustainable, erodes the rural environment and undermines the development of a compact village form.

Natural Environment and Amenity

It is noted that the plan area adjoins the Dingle Peninsula SPA. Development proposals are required to be compatible with the conservation objectives of this SPA.

Growth and Residential Development

It is stated that the development boundary for Baile na nGall defines the existing extent of the area where new development may be considered, whilst also allowing for some expansion for residential development adjacent to the village core. The development boundary for Baile na nGall is largely determined by topography and infrastructural considerations. During the lifetime of this Plan, development is required to focus mainly on these lands, located close to the village core.

It is the objective of the plan to encourage the development of a compact and sustainable village structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites. All new development shall occur within the development boundary and shall reflect the existing vernacular design subject to compliance with the development management standards set out in the County Development Plan.

Development Strategy

The development strategy for the village includes:

- Ensure that all new development is of traditional design and layout and does not detract from the character of the settlement. New developments should have reference to the settlement pattern found in the grouping of buildings adjacent to the pier.
- Ensure that all new development is located within the settlement's development boundary.
- Preserve and enhance the use of the Irish language.
- Ensure that all residential development within the village should cater for the needs of the local population who wish to live in the area on a permanent basis.

Overall Objectives

These include:

OO-1: Ensure that the high quality natural setting of the village is maintained and protected from inappropriate development.

OO-2: Protect the linguistic and cultural heritage of the Gaeltacht in Baile na nGall including the promotion of Irish as the community language.

OO-4: Ensure that new residential developments on lands within the development boundary shall be small scale and low density served by individual treatment systems in accordance with the EPA standards pending upgrading /construction of the waste water treatment plant in the village.

5.2 Kerry County Development Plan 2015-2021

I note the provisions of the County Development Plan as they relate to rural housing, landscape protection, European sites, protected views, and archaeology. These will be addressed further in my assessment.

5.3 Appropriate Assessment

This matter will be addressed in my assessment.

5.4 EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- The appellant Siobhán Ní Dhubhna grew up on the family farm in the locality. Further to a copy of her birth cert and a letter from the local national school submitted to the planning authority with the application, she now attaches a letter of reference from a local councillor to verify she grew up in the locality and that her family have farmed there for generations. Reference is made to Development Plan objectives RS-7, RS-10 and RS-11.
- Regarding the issue of views and prospects, attention is drawn to the existing structures on the western side of the site that are currently second homes / holiday homes. In this context the refusal seems very unjust. The development was designed to minimise the impact on the landscape and to respect views and prospects by using all natural external finishing materials. Reference is made to Objectives RS-13, RS-15, RS-6, and RS-12 of the Plan.

- As the applicant grew up in the locality, is a native Irish speaker, her family are farming in the locality, and as the appellants are looking to reside permanently in the area and will contribute to the rural community and village all year round the application should be looked upon more favourably.
- The pre-planning guidance given was followed.
- The appellants' house in Killorglin is mortgaged and has to be sold to fund the proposed development in order to relocate nearer to the appellant's elderly parents to assist with their needs.
- Regarding the visual impact, attention is again drawn to the line of holiday homes / second homes and the large untraditional house beside the site. The appellants attach photographs and video footage on a memory stick in support of this. It is noted that there were no objections to the application.
- The appellants cannot see how they did not meet the rural housing need requirement based on the information that was provided to the planning authority. Reference is made to the Rural Housing Guidelines. The appellant's parents are elderly and she wishes to move closer to them and to the Gaeltacht community which she grew up in. Reference is made to development plan provisions relating to Gaeltacht areas.

6.2 Planning Authority Response

The planning authority reiterated that the site is in a very sensitive coastal location outside of Ballydavid, on lands zoned Secondary Special Amenity, within the line of protected views and prospects, and within the Dingle Peninsula SPA. It was considered that it was not possible to integrate the proposed development into this sensitive area. Acknowledging that there is existing development, some of which is of a conspicuous nature closer to the settlement, it was submitted that this was not a reason to further extend development outside of the village. The proposal is seen to be an obtrusive feature that would blur the lines between the settlement and the countryside and it would interfere with the visual amenities of the area. It was also accepted that many of the existing houses inside and outside the settlement are holiday homes. Referring to Table 3.7 of the Development, it was submitted that it is still unknown if the applicants can comply with the provisions relating to areas zoned Rural Secondary Special Amenity. The planning authority concluded by stating that it

is considered that the correct decision was to refuse planning permission for the reasons stated.

6.3 Observations

The observer supports the appellants' planning application and notes that the applicant Siobhán Ní Dhubhna grew up in the parish, spent time there helping her parents and working on the farm. Reference is made to the development of holiday homes in the area and the inability of local people to get permission to build and settle in the local community. It is noted that the applicant Siobhan Ní Dhubhna is an Irish speaker, that the applicant Labhras Ó Maidin is seeking to improve his Irish, and there is a decline in the language in the area. Preserving the language by people settling down in the area with Irish is referenced.

7.0 Assessment

7.1 Introduction

7.1.1 I consider that the principal planning issues for consideration are the proposal in the context of the development of Baile na nGall, rural housing need, visual impact, impact on an environmentally sensitive area, and effluent treatment.

7.2 The Proposal in the Context of the Development of Baile na nGall

7.2.1 Baile na nGall is designated a small rural settlement in the Dingle Functional Area Local Area Plan with a defined development boundary. The Plan states that the development boundary for Baile na nGall defines the existing extent of the area where new development may be considered, whilst also allowing for some expansion for residential development adjacent to the village core. It also states that, during the lifetime of the Plan, development is required to focus mainly on these lands, located close to the village core. It is the objective of the Plan to encourage the development of a compact and sustainable village structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites. All new development is required to occur within the development boundary. It is a key component of the development strategy for the village to ensure that all new development is located within the settlement's

development boundary. The overall objectives for the village include Objective OO-1, which seeks to ensure that the high quality natural setting of the village is maintained and protected from inappropriate development.

7.2.2 The site of the proposed development lies to the north of and outside of the village's development boundary. The development of the main section of the site would comprise a house and garage on an open and exposed location, set back substantially from the public road frontage, behind an existing field that fronts onto the road. The site for the proposed development is distinctly beyond the village's settlement boundary. To be encouraging development of this nature at this location would undoubtedly exacerbate a pattern of disorderly development beyond the village, contrary to the intent, strategy and objectives of the village's plan.

Furthermore, it would set a most undesirable precedent for further development of this nature, set back from public roads in fields beyond the village's development boundary, exacerbating residential sprawl on the approaches to the village, contrary to the planned strategy for the village's orderly expansion.

7.2.3 Having regard to the above, it is reasonable to determine that the proposed development runs contrary to the orderly development of Baile nan Gall as espoused in the village's plan.

7.3 Rural Housing Need

7.3.1 The site of the proposed development is located within an area designated a 'Structurally Weak Area' in the Kerry County Development Plan. Objective RS-12 of the Plan seeks to accommodate demand for permanent residential development in such areas as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas. These matters will be considered later in this assessment.

7.3.2 The site is also located within an area designated 'Secondary Special Amenity'. Areas of Secondary Special Amenity are seen to constitute sensitive landscapes which can accommodate a limited level of development. The level of development depends on the degree to which it can be integrated into the landscape. Residential

development in these areas is regulated in accordance with the provisions of Section 3.3.1 (Rural Area Type and Rural Housing Objectives) and Table 3.7 of the Plan. Table 3.7 is the Amenity Zoning Settlement Policy. The rural housing policy for Secondary Special Amenity is as follows:

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 applicants family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality.

7.3.3 While I note that the site of the proposed development is located within a designated 'Structurally Weak Area' in the County Development Plan, I must make the general observation that the wider area in which the site is located does not exhibit any 'weakness' in terms of housing development. This area has been susceptible to an exorbitant amount of one-off houses, many of which present and appear as holiday homes. It is evident that this is an area that has succumbed to substantial development pressure for such development, which adds significant additional pressure on any attempts to curb further sprawl and to contain and achieve an orderly development of the village.

7.3.4 It is noted that the appellant Siobhán Ní Dhubhna has submitted that she grew up on a family farm in the locality. She submitted a copy of her birth certificate and a letter from the local national school to the planning authority and she has attached a letter of reference from a local councillor in her appeal to the Board. It is understood from the appeal submission that the appellants reside in Killorglin over 60km south-east of Baile na nGall. Siobhán Ní Dhubhna is stated to work in a hotel in Tralee (over 60km from Baile na nGall) and Labhras Ó Maidin works in construction. The appeal site is being acquired from the appellant Siobhán Ní Dhubhna's brother. There is no further understanding about the appellants' links to this area, such as where she resided when she was growing up, where the family farm is, where her parents reside, what

is the holding of the landowner, what is the planning history associated with this holding, etc.

7.3.5 It is clear from the above that the appellants have no 'rural housing need' to reside at the location of the proposed development. They do not reside in the area. They do not work in, and do not have any attachment to, farming or agricultural-related activities at this rural location. There is no 'rural generated housing need' associated with the proposed development.

7.3.6 It is apparent that, based on the applicant's submission on need, this proposal would run contrary to the *Sustainable Rural Housing Guidelines for Planning Authorities*, as the appellant has no genuine 'rural' housing need within this part of the county that is under significant development pressure for one-off housing and holiday homes. The applicant's housing needs can be met within towns and villages that have been serviced to accommodate such development and most likely a lot closer to the appellants' places of work.

7.3.7 Further to the above guidance, I note national planning policy as set out under the *National Planning Framework* published in February, 2018. This includes the following:

- National Policy Objective 19 seeks to 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, it is policy to 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.

7.3.8 From the details on the appeal file, it is clear that the appellants do not have any rural housing need justification that would merit permitting the development of a house on this site. There is no demonstrable economic or social need to live in the

area in which the proposed house is intended to be sited. The proposal would, thus, be in conflict with the National Planning Framework.

7.4 The Visual Impact

7.4.1 The site of the proposed development forms part of an open and exposed field. It is again noted that it is in an area where there is a proliferation of one-off and holiday homes. In this context, it would present as another structural intrusion that imposes on the natural amenities of this area. Thus, while not presenting as an isolated and individually distinct impact, it would contribute by adding further to the erosion of the natural qualities of the area, an area which is defined as an Area of Secondary Special Amenity in the Kerry County Development Plan. The Plan recognises this area as one which constitutes a sensitive landscape. The Plan acknowledges that this is an area that can accommodate a limited level of development. Development of houses in this area is not limited and a continuation of the pattern of development that prevails by including yet another new house significantly further erodes the sensitivity of this landscape. The level of development permitted within this Area of Secondary Special Amenity is dependent upon the degree to which the development can be integrated into the landscape. The proposed development is intended to be sited at an open and exposed location. While housing is in close proximity to the site, the development of a house at this location cannot be 'integrated' into this landscape. The development will add further to a pattern of development which distinctly does not 'integrate' with the landscape due to such development's physical scale, form, height, character, design, etc. Having regard to this visual impact, one can reasonably conclude that the proposed development would run contrary to Objectives RS-4, which seeks to 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 and ZL-1, which seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives..

7.4.2 In addition to the above, I note that the views westwards from the local road onto which the site has frontage are protected views in the Kerry County Development Plan. The Plan states that development, where permitted, should not seriously hinder or obstruct these views and should be designed and located to minimise their

impact. It is an objective to preserve these views (Objective ZL-5). Adding further houses west of the local road from which views westwards are protected will not protect the existing views as continuing the development of houses at this location will encroach on and impede the views to be protected.

7.4.3 Overall, it is reasonable to conclude that the proposed development would have an adverse visual impact by way of adding to the proliferation of housing on a sensitive landscape, contributing to the erosion of the natural amenities of the area and adversely impacting on protected views. The proposed development would, therefore, run contrary to the relevant provisions of the Kerry County Development Plan.

7.5 Impact on an Environmentally Sensitive Area

7.5.1 The Kerry County Development Plan recognises that the location in which the proposed development would be constructed is a sensitive landscape. This landscape sensitivity is compounded by the location for the proposed house and garage being within the Dingle Peninsula Special Protection Area, i.e. the structures are proposed to be within the SPA. The objectives of the Kerry County Development Plan include:

NE-11: Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

NE-12: Ensure that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall be permitted on the basis of this Plan (either individually or in combination with other plans or projects) unless imperative reasons of over-riding public interest can be established and there are no feasible alternative solutions.

7.5.2 While I note the report of the planning authority's Biodiversity Officer, I find it very difficult to accept that the construction of a house and garage, the servicing of the

site, and the ongoing occupancy of this residential development sited within a Special Protection Area would not have the potential to have significant effects for birds of conservation value within this SPA. I could not reasonably otherwise conclude that a minimum requirement would be the submission of a Natura Impact Statement to allow for a follow-up appropriate assessment by the planning authority before any conclusions could be drawn on how the proposed development may effect the conservation interests of this SPA.

7.6 Effluent Treatment

7.6.1 I note that the development proposes to be served by the public foul sewerage system in Baile na nGall. The Plan for the village in the Local Area Plan notes that Baile na nGall is served by a septic tank which outfalls to the seashore and which is currently operating at capacity. The Plan states that there are no immediate plans to upgrade or expand on sewerage facilities in the village. The constraint on existing effluent treatment facilities is seen to be a limiting factor in the future development of the village in the short-term.

7.6.2 There is no information to indicate that the existing public sewerage infrastructure in Baile na nGall has undergone any major upgrade to allow for further development of this village. It is completely unsustainable to be adding further effluent loads to this wholly inadequate system. By permitting further development to discharge more effluent to the existing system one is continuing to contribute to the deterioration of the marine environment into which the village's septic tank discharges. The proposed development cannot be accommodated in such a context. This demonstrates that the proposal runs contrary to any reasonable understanding of the term 'proper planning and sustainable development'. This development is premature pending the provision of an upgraded treatment system for Baile na nGall.

8.0 Recommendation

8.1 I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. Baile na nGall is designated a small rural settlement in the Dingle Functional Area Local Area Plan with a defined development boundary. It is the objective of the Plan to encourage the development of a compact and sustainable village structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites in the settlement, while all new development is required to occur within the development boundary. Having regard to the site of the proposed development being located to the north of and outside of the village's development boundary, it is considered that the proposal would be contrary to the objective of the Plan, would contribute to disorderly development on the approaches to the village, and would set an undesirable precedent for development of a similar nature in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the site in a rural area where there is significant development pressure for one-off housing and holiday homes, its siting within an Area of Secondary Special Amenity Area as designated in the Kerry County Development Plan 2014, and having regard to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and the National Policy Objectives of the National Planning Framework, which seek to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicants do not come within the scope of the housing need criteria as set out in the Rural Housing Guidelines for a house at this rural location and do not comply with National Policy Objectives. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, thus, be contrary to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and rural policy provisions of the

National Planning Framework, and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The site of the proposed development is located within an area designated as a Rural Secondary Special Amenity Area in the Kerry County Development Plan 2015-2021, which sets out a number of provisions to protect such landscape areas from development. These sensitive landscapes can only accommodate a limited level of development and this is dependent on the degree to which the development can be integrated into the landscape. The proposed development, when taken in conjunction with existing dwellings in the area, would constitute an excessive density of development by virtue of its impact on the landscape and would interfere with the character of the surrounding rural landscape, which it is necessary to preserve, and would, therefore, be contrary to objective ZL-1 of the Development Plan, which seeks to protect the amenity value of the landscape of the county. Furthermore, the proposed development would be sited within views westwards from the local road onto which the site has frontage, which are protected views, and it would encroach on, hinder and obstruct these views to be preserved in accordance with Objective ZL-5 of the Kerry County Development Plan. The proposed development would, therefore, be visually intrusive, would conflict with the provisions of the Development Plan and would, thus, be contrary to the proper planning and sustainable development of the area.
4. 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 effect on the Dingle Special Protection Area (Site Code: 004153), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
5. It is considered that the proposed development would be premature by reference to the existing deficiencies in the public piped sewerage facilities

serving the area and the period within which the constraints involved may reasonably be expected to cease.

Note: The Board may consider that Reasons 1, 4 and 5 constitute new issues.

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Kevin Moore
Senior Planning Inspector

XX July 2020