



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307265-20

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<b>Development</b>	Retention of house, as constructed and all associated site works and construction of a wastewater treatment system.
<b>Location</b>	DERREEN, LAURAGH, KILLARNEY, CO KERRY
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	2080
<b>Applicant(s)</b>	Charles Bigham.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Charles Bigham.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	9 <sup>th</sup> July 2020.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of .311 hectares and is located within a mature woodland setting within the grounds of Derreen House and Gardens part of what was the Landsdowne Estate on the Beara Peninsula in County Kerry. The location is at the head of Kilkakilloge Harbour and is surrounded by the Cahra Mountains. Derreen Garden extends to approximately 60 acres of mature woodland with sub-tropical plants from around the world and operates as a year-round visitor attraction. Access to the appeal site is from the Regional Road R57 northwest of the settlement of Lauragh.
- 1.2. The appeal site is occupied by a modest single storey dwelling with smooth painted render finish and corrugated metal roof. The dwelling occupies the site on the location of a pre-existing shed. A 1.2m high sod and stone fence forms the northern boundary adjacent to the access / maintenance road. There are outbuildings and a dwelling to the northwest and a tennis court and Derreen House (NIAH Ref 21310805, Protected Structure RPS 108-5 to the west of this. Access is via the existing entrance to Derreen House and Gardens from the R573.

## 2.0 Proposed Development

- 2.1. The application as set out in public notices involves permission to retain as constructed a dwelling house and all associated site works, permission to construct a new wastewater treatment system consisting of a mechanical aeration unit, intermittent filter and polishing filter to serve the dwelling house being retained.
- 2.2. Application details indicate that the cottage proposed for retention has been constructed as retirement home for the dedicated gardener who was born at Derreen gardens and worked here as gardener for his entire career. The existing gardener's cottage is in excess of 100 years old and in need of renovation and is not suitable for accommodation of elderly people. This cottage is currently undergoing refurbishment and modernisation with the intention that it will house the newly appointed gardener.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 24<sup>th</sup> March 2020 Kerry County Council issued notification of the decision to refuse permission for the following reasons:

1. *“Based on the information submitted with the application, the Planning Authority is not satisfied that the proposed development would comply with the provisions of Section 3.3.2.3 of the Kerry County Development Plan 2015-21, in relation to developments in an area zoned Rural Prime Special amenity, as the dwelling is not for a son/daughter / family farm member engaged in agriculture or horticulture. The proposed development would contravene the Kerry County Development Plan 2015-21, would set an unwanted precedent for similar such developments and would therefore, be contrary to the proper planning and sustainable development of the area.*
2. *Based on the information submitted with the application, the Planning Authority is not satisfied that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Planners reports that the proposal would not satisfy the requirements as set out in Sections 3.3.2.3 of the County Development Plan as the dwelling is not for a son/daughter / farm family member engaged in agriculture or horticulture. Proposal would set a dangerous precedent in a Prime Special amenity Area. Refusal was recommended.

#### 3.2.2. Other Technical Reports

Senior Executive Engineer Environment requests further information in relation to slope of the site of the proposed intermittent filter system. On the basis of presence of roots on the site, the question of preferential flow paths should be assessed.

### 3.3. Prescribed Bodies

No submissions

### 3.4. Third Party Observations

None

## 4.0 Planning History

### No planning history on the appeal site

In relation to Derreen House

**06/1051** Permission granted for modifications and extension to the basement level kitchen, below the ground floor bay window at side of house, with new structural head in existing mass concrete wall, new bay window to match existing, extended stone-paved patio area including removal of existing iron steps accessing garden. This development involves the carrying out of works to a protected structure.

## 5.0 Policy Context

### 5.1 National Policy

- Sustainable Rural Housing Guidelines 2005
- National Planning Framework – National Policy Objective 19

### 5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers. The site is zoned Rural Prime Special Amenity and is within a Structurally Weaker Rural Area.

#### 3.3.2.3 Prime Special Amenity Areas

Prime Special Amenity areas comprise of the outstanding landscapes throughout the County. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation.

It is the policy of the Council that development in relation to Prime Special Amenity areas shall be regulated in accordance with the policies outlined in Section 3.3.1 and Table 3.7.

Section 3.3.1 includes the following objectives in relation to rural housing.

**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-3** Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within existing cluster developments.

**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 area complies with the EPA’s 2009 *Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses* (*p.e < 10*).

**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.

#### Table 3.7 **Amenity Zoning Settlement Policy**

##### **Prime Special Amenity**

Farm family member engaged in agriculture or horticulture.

## 5.2. **Natural Heritage Designations**

The appeal site is not within a designated area, The closest such site is the Kenmare River Special Area of Conservation (Site Code 002158) which is to the south north and west of the site and at its closest within approximately 100m to the south of the site. The Caha Mountains SAC lies circa 1.8km to the southeast.

## 5.3. **EIA Screening**

Having regard to the limited scale and nature of the development proposed for retention and the absence of connectivity to any sensitive location, there is no real

likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can therefore be excluded at preliminary examination.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 The appeal is submitted by McCutcheon Halley, Chartered Planning Consultants and includes appendix report from Mol Consulting Engineers in respect of certification of the proposed wastewater system. Grounds of appeal are summarised as follows:

- Planning Authority did not raise any concerns regarding visual impact on the Prime Scenic Amenity Area.
- Proposal complies with rural Housing Guidelines having regard to location within a structurally weaker area.
- First reason for refusal is based on misapplication of the KCDP policy on rural housing in a prime scenic amenity area which requires a balanced and integrated approach to the implementation of both the layout and design objectives of Section 3.3.1 and the occupancy category listed in Table 3.7.
- No reasonable basis in the first reason for refusal. The applicant and intended occupants fall within the category of farm family member engaged in agriculture or horticulture.
- Queries raised by the Site Assessment Unit regarding location of intermittent polishing filters do not justify reason 2 regarding prejudice to public health. Issues raised are addressed in Engineering report attached as appendix 2.
- Precedents of previous decisions of An Bord Pleanála provide that the issues raised regarding occupancy and detailed specification of the polishing filter could and should have been addressed by condition.
- Kerry County Development Plan does not comply with the 2005 Guidelines because the Planning Authority has failed to make adequate provision for local housing need in area which are structurally weaker and designated as Prime Scenic Amenity.

- The integration between the policies on rural housing and rural tourism policy particularly in regard to the structurally weaker rural areas has not been addressed.
- Section 3.3.1 RS-12 provides that within structurally weaker areas which are also designated prime scenic amenity, it is an objective to accommodate demand for permanent residential development 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 area.
- Both the Bigham and Ward families have been engaged in horticulture on this property for at least two generations. An additional housing unit is now required to accommodate the family of the new member of the horticultural staff.
- Intermittent and polishing filters have been relocated to a more level part of the site fully compliant with EPA code of practice.
- Precedent case 246599. Housing need of stud farm managers. 305479 regarding wastewater treatment system.
- No justification for the status given to table 3.7 in planner's report. No explicit policy statement in the text of the Kerry County Development Plan requiring occupancy in prime scenic amenity areas to be restricted to farm family members engaged in agriculture or horticulture. It would be unreasonable, and contrary to the 2005 guidelines to impose such a blanket restriction in cases where the dwelling would not have any perceptible impact on scenic amenity.

## 6.2. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

## 7.0 **Assessment**

- 7.1. Following my inspection of the site and consideration of the documentation on file, the prevailing local and national policies and plans, I propose to consider the appeal under the following broad headings:

Principle of development

Design and visual impact

Servicing and Wastewater Treatment

Appropriate Assessment.

## **7.2 Principle of Development**

7.2.1 As outlined above the site falls within an area designated as Structurally Weaker Rural Area and also designated as an area zoned Rural Prime Special Amenity within the Kerry County Development Plan 2015-2021. The Planning report relies on the provision at 3.3.2 of the Development Plan which provides that “*Where there is an overlap between the Rural Area types and the Amenity Areas the policies relating to the Amenity areas shall take precedence*”. Table 3.7 Amenity Zoning Settlement Policy provides that within Prime Special Amenity areas development shall be restricted to “farm family member engaged in agriculture or horticulture.” In the context of national policy, as set out in National Policy Objective 19 of the National Planning Framework, it is policy to ensure that in providing for the development of rural housing, that a distinction is made between areas under urban influence, and elsewhere where it is policy to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.2.2 The application details outline the unique circumstances of the appeal case. The dwelling was constructed to meet the housing need as the retirement home of the former head gardener and his wife. The former head gardener currently resides in a nursing home in Kenmare and occasionally visits the house where his wife now resides on a permanent basis. Both have lived at this location for a considerable time and a strong connection to this location is not disputed. I consider that the appeal site presents a unique circumstance which complies with national policy which seeks to accommodate rural generated housing need where it arises. On the basis of my assessment I conclude that in the unique circumstances of the case the principle of development is acceptable and is in accordance with rural settlement policy as set out in the Rural Housing Guidelines and the County Development Plan and the issue of precedent is not significant.



### **7.3 Design and visual impact**

7.3.1 As regards the visual impact of the proposed development, the site is well screened and in visual terms the modest single storey dwelling is readily accommodated on the site, which was formerly occupied by a woodshed, without significant visual impact. Existing site features including trees and hedgerows have been retained and further landscaping with native species is proposed to aid integration of the dwelling. In terms of finishes and materials the choice is appropriate to the site context. I note that the Planning Authority raised no issues with regard to visual impact.

### **7.4 Servicing and Wastewater Treatment**

7.4.1 The dwelling is to be serviced by way of a packaged wastewater treatment system and polishing filter. I note that the local authority Environment Section raised some concerns with regard to the location of the intermittent filter system on a slope and also having regard to the apparent presence of roots recommended further investigation with regard to possible preferential flow paths. I note that in response and with the appeals submission the location of the proposed wastewater treatment system was revised to ensure location on a lesser slope. A number of trial holes were excavated to bedrock at 1.9m and 1.8m where water table was not encountered and to bedrock at 2.8m and watertable was encountered at 2.4m. Soil is described as silt clay with blocky structure and displaying threads and ribbons. A T value of 49.58 was determined and P value of 48.16. achieving full compliance with the EPA Code of practice. I consider that the solution proposed on the site will provide a suitable treatment for wastewater.

### **7.5 Appropriate Assessment**

7.5.1 Having regard to the nature and scale of the development and distance from a European 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

- 8.1. I recommend that permission for retention and completion of the dwelling be granted subject to conditions.

### Reasons and Considerations

Having regard to the character and location of the appeal site and to the provisions of the Sustainable Rural Housing Guidelines 2005 and the National Planning Framework – National Policy Objective 19, to the nature and horticulture related function of the development, and to the design and nature of the works proposed for retention and completion it is considered that subject to compliance with the conditions as set out below, the proposed development would be in accordance with the objectives of the Sustainable Rural Housing Guidelines for Planning Authorities and National Policy Objective 19, would not seriously injure the amenities of the area or be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS

1. The development to be retained shall be in accordance with the plans and particulars lodged with the application, 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The dwelling shall be 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. The dwelling shall not be sold, let or otherwise transferred or conveyed, save as part of the main dwelling on the site.

Reason: To restrict the use of the dwelling in the interest of residential amenity.

3. Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

4.
  - (a) The treatment plant and polishing filter shall be located, construction and maintained in accordance with the details submitted to The Board on the 2<sup>nd</sup> June 2020, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency 2000. 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 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.
  - (e) Within three months of the date of permission, 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.

5. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

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Bríd Maxwell  
Planning Inspector  
1<sup>st</sup> September 2020