



An
Bord
Pleanála

Inspector's Report ABP-307356-20

Development	Remove mobile home and construction of single-storey house
Location	Baile na bPoc, Baile na nGall, Contae Chiarraí
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/91
Applicant(s)	Breandán Ó Beaglaoich
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	
Appellant(s)	Breandán Ó Beaglaoich Máire Uí Shíthigh
Date of Site Inspection	23 rd September 2020
Inspector	Kevin Moore

1.0 Site Location and Description

The 0.4 hectare site is located in Baile na bPoc, approximately 10km north-west of Dingle in County Kerry. The site lies to the north of Regional Road R549, a loop road in this part of the Dingle Peninsula which is narrow in this area. The site is above the level of the road, sloping gently uphill away from the access road. It comprises a small field in which there is a mobile home located on its north-eastern side with an access lane. There is a two-storey house immediately to the southwest of the access to the site. There is a grouping of old houses west of this house, many of which are vacant and have been altered to agricultural use. There is a dormer bungalow a short distance to the north-east of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the removal of the existing mobile home, the closure of an existing vehicular entrance, the construction of a single-storey house, the construction of a new vehicular access, and the installation of a proprietary waste water treatment system. The house would be a one bedroom dwelling of traditional design with a stated gross floor area of 50 square metres. It would be served by a mains water supply.
- 2.2. Details submitted with the application included a covering letter explaining how the proposal has addressed reasons for refusal in previous planning applications, a letter from an engineer relating to the waste water treatment proposal, a completed site characterisation form, and a landscaping report.

3.0 Planning Authority Decision

3.1. Decision

On 2nd April 2020, Kerry County Council decided to refuse permission for the proposed development for two reasons relating to adverse impact on the landscape character and interference with views and prospects.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, development plan provisions, reports received and third party submissions made. It was acknowledged that the site is located on land zoned Rural General, designated as a Stronger Rural Area and located within the line of protected views and prospects. It was considered that the site is located in a visually sensitive rural area, where there is a small cluster of residential and agricultural buildings to the west and a highly visible bungalow to the east. It was noted that it is intended to carry out extensive earthworks to facilitate the development and this was seen to result in considerable scarring of the landscape. The proposal to remove the roadside boundary was also noted. It was considered that it would not be possible to integrate a dwelling at this location, that the proposal would injure visual amenities, and that it would set an undesirable precedent for ribbon-style suburban development. It was submitted that the planning authority is satisfied that the proposed development would comply with the provisions of the County Development Plan as they relate to a Stronger Rural Area. A refusal of permission for two reasons was recommended.

3.2.2. Other Technical Reports

The County Archaeologist noted that there are no recorded monuments in proximity to the proposed development and that no mitigation was required.

The Site Assessment Unit had no objection to the proposed wastewater treatment proposal subject to conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposed development.

3.4. Third Party Observations

Letters of support for the proposed development were received from Orna Dunlevy and Bob Ó Cathail, Camilla Dinkel, and Máire Uí Shíthigh.

4.0 Planning History

P.A. Ref. 19/331

Permission was refused for retention of an existing dwelling and installation of a wastewater treatment unit for three reasons relating to adverse landscape impact, impact on views and prospects, and disposal of waste water being prejudicial to public health.

P.A. Ref. 18/1151

Permission was refused for the removal of a mobile home, the construction of a single-storey dwelling and installation of a wastewater treatment unit for three reasons relating to adverse landscape impact, impact on views and prospects, and the absence of archaeological testing.

ABP Ref. PL 08.244267 (P.A. Ref. 14/659)

Permission was refused by the Board for a house and effluent treatment unit for two reasons relating to the adverse impact on the character of the landscape and adverse impact on views and prospects.

P.A. Ref. 13/602

Permission refused for a dormer house for four reasons relating to impact on the landscape, impact on views and prospects, effluent disposal, and rural housing need.

P.A. Ref. 08/2595

Permission refused for a dormer house for four reasons similar to P.A. Ref. 13/602.

P.A. Ref. 08/2587

Permission refused for a house for four reasons similar to P.A. Ref. 13/602.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

Rural Housing

Rural housing objectives include:

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-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.

The site is located within an area designated a 'Stronger Rural Area' according to Map 3.1 of the Plan. The Plan objectives relating to this rural area are:

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.

RS-11: Consolidate and sustain the stability of the rural population and to promote a balance between development activities in urban areas and villages and the wider rural area.

Landscape

The site is located within an area zoned 'Rural General'. Objectives for landscape protection include:

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

ZL-4: Regulate residential development in rural areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of the Plan.

Views and Prospects

The views northwards at this location from the public road are protected views.

Objective ZL-5 of the Plan is as follows:

“Preserve the views and prospects as defined on Map No’s 12.1, 12.1a– 12.1u.” Map 12.1d includes the area in which the site is located.

Cultural Heritage

The Plan notes that the cultural heritage of County Kerry embraces various aspects of the artistic, musical, literary, linguistic and sporting heritage. It is further noted that the protection of the linguistic and cultural heritage of the Gaeltacht, including the promotion of Irish as a community language, is a mandatory objective of the development plan in accordance with Section 10(2) (m) of the Planning & Development (Amendment) Act, 2010. The Plan further states that Kerry County Council is committed to the preservation and promotion of the linguistic heritage of the Gaeltacht. The Council recognises the importance of Irish across Kerry, both inside and outside the Gaeltacht, and supports the use of Irish by developing additional services through Irish as defined in it’s Scéim Gaeilge 2010-2013

It is noted that the Gaeltacht areas are also rich in traditional ways, folklore, writing, music, and historic and archaeological sites and that every effort must be made to preserve and maintain the Gaeltacht traditions.

Objectives for the Gaeltacht include:

H-19: Have regard to the impact of gradual residential development in Gaeltacht areas by non-Irish speakers.

5.2. **Appropriate Assessment**

Having regard to the very significant separation distances between the proposed site and the nearest European Site (Dingle Peninsula SPA) and the relatively minor nature and extent of the proposed development, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. **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 from Máire Uí Shíthigh**

The grounds of appeal may be synthesised as follows:

- Reference is made to Development Plan policy as it relates to the Gaeltacht community and to the role of the Irish language, culture, and tradition, inclusive of music and literature. The role of the appellant as a native of the area, Irish speaker, a renowned musician, his role in the development and promotion of traditional music in the area, and the contribution to tourism and to preserving and sustaining these traditions in accordance with the aims of the Kerry County Development Plan are noted.
- The lack of consideration by the planning authority of the Irish language question is queried, notwithstanding the provisions set out in the planning authority's Scéim Gaeilge and supporting policy documentation. Note is made

of the decline in daily usage of the language, policy provision to protect cultural heritage and to promote the use of Irish linguistic support, and studies undertaken inclusive of the *Comprehensive Study of the Use of Irish in the Gaeltacht*. The vulnerability of the sustainability of the Irish language in the area in which the site is located is emphasised. Note is also made to the planning authority failing to implement language conditions applicable to housing development in the area as highlighted by the Irish Language Commissioner.

- The duty of the Board under the Planning and Development Act and *Straitéis 20 Bliain don Ghaeilge* to protect the language heritage and culture of the Gaeltacht are emphasised.
- The socio-linguistic importance of the development in the context of the appellant's association with this Gaeltacht area is impressed upon the Board to be given due consideration.
- Reference is made to the Board's previous decision under ABP Ref. PL 08.244267 and to the Inspector's report, with particular note made of the Inspector's considerations on the connectivity of the site with the hamlet of Baile na bPoc and the acceptability of the development in visual terms. It was further noted that the Board did not have regard to the language or Gaeltacht question in its decision.
- The appellant notes the significant changes that have been made to the scale and height of the proposed house and its revised design since the previous decision of the Board.
- It is submitted that the proposed development would not constitute ribbon development having regard to its context and to the proposed low profile and siting of the development.
- The appellant notes the provisions of the Development Plan as they relate to rural housing and considers the requirement of an occupancy clause is material in this instance. The settlement pattern of the area is also noted and it is requested that the Board acknowledge the traditional established clachan form of development in Baile na bPoc.

- In conclusion, it is requested that the Board grant permission for the development, which is considered to be in accordance with the proper planning and sustainable development of the area and which is critical for this Gaeltacht area. A schedule of reasons, considerations and conditions are recommended.

The appeal submission included support correspondence from Comharchumann Forbartha Chorca Dhuibhne Teo, Seaghan Mac an tSionnaigh (Uppsala University), Dr John Walsh (NUI Galway), Conradh na Gaeilge, Niamh Ní Bhaoill (Scoil Cheoil an Earraigh), Dr Dáithí de Mórdha, Oidhreacht Chorca Dhuibhne, Eddie Brazil, Dr Tadhg Ó Dhúshláine (NUI Maynooth), Feargal Mac Amhlaoibh (Inné), and John Prendergast (Oifig Plean Teanga Chiarraí).

6.2. Grounds of Appeal from Breannán Ó Beaglaioich

The grounds of appeal reflect those set out in the appeal by Máire Uí Shíthigh.

6.3. Planning Authority Response

The planning authority notes the planning history associated with the site. It is submitted that the site is located within a visually sensitive rural area. The Council's Planner's assessment of the impact of the proposed development is repeated. While acknowledging that the applicant is a native Irish speaker and is well known for his connections with the area, it is submitted that this does not permit the planning authority to overlook the issues associated with the site and that the issues relate to the site and not the applicant. It is further submitted that due consideration was given to the needs of the Gaeltacht and the Irish language policies of the Development Plan. Note is made of recent planning statistics relating to the West Kerry Gaeltacht area. The³ planning authority submits that the correct decision issued from Kerry County Council.

6.4. Further Responses

The appellant Máire Uí Shíthigh supported the applicant's appeal.

7.0 Assessment

7.1. Introduction

7.1.1 I consider the principal planning issues relate to the development in the context of its Gaeltacht location, rural housing need, and visual impact.

7.2. The Development in the Context of its Gaeltacht Location

7.2.1 The applicant and appellant is a renowned traditional musician from Baile na bPoc. He is a native Irish speaker from this area. It is understood that he makes a distinctive contribution to cultural heritage as one who performs and promotes traditional music and is to the forefront of such music tradition both at county and national level, and indeed beyond. With due regard to the current Kerry County Development Plan, which seeks to promote the linguistic and cultural heritage of the county, it may reasonably be ascertained that the appellant is one where such aims, policies and objectives of the Plan would seek to support in his native place. I particularly acknowledge Objective H-19 of the Plan which seeks to have regard to the impact of gradual residential development in Gaeltacht areas by non-Irish speakers. The applicant, as a native Irish speaker from this area, together with his notable contribution to the cultural heritage of this area, merits support in principal to be accommodated in his native area in order to facilitate his continued important contribution to the cultural heritage of the area.

7.3. Rural Housing Need

7.3.1 I note that there is no dispute in relation to the appellant's rural housing need. The site of the proposed development is located within a designated 'Stronger Rural Area' in the Kerry County Development Plan and the appellant meets with Objective RS-10, which seeks to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised. With regard to the *Sustainable Rural Housing Guidelines for Planning Authorities*, it is evident that the appellant meets with the definition of a person who is an intrinsic part of the rural community. Significantly, he is looking to construct his sole permanent residence on this site. With regard to the *National Planning Framework*, I note that it places a

major focus on strengthening the rural fabric and supporting the communities who live there, with National Policy Objective 14 seeking to protect and promote the sense of place and culture and the quality, character and distinctiveness of the Irish rural landscape. While recognising that there is a continuing need for housing provision for people to live and work in the countryside, the NPF also emphasises the need to demonstrate a functional economic or social requirement for housing need in areas under urban influence. While I acknowledge the distinct pressure being placed on this area of West Kerry from the demand for one-off houses, and notably holiday homes, I am satisfied to determine that the appellant clearly has a functional economic and social requirement for housing need at this location, based upon his links, cultural background and profession. The proposed development would not be at variance with the provisions of the NPF.

7.4. Visual Impact

- 7.4.1 Effectively, the sole reason for refusal of permission by the planning authority relates to the injury the appellant's house would have on the visual amenities of the area in which it would be sited and the adverse impact it would have on views and prospects that are protected and which are attained from the nearby public road.
- 7.4.2 The first issue that requires consideration, and which in my opinion was not a consideration of the planning authority in its deliberations, is the difference between the development now proposed and that previously refused by the Board under Planning Appeal Ref. PL 08.244267. The previous proposal was for a dormer dwelling with a stated floor area of 133 square metres. The current proposal is for a small, one bedroom, one room deep, single-storey, cottage-style dwelling with a stated floor area of 50 square metres and which would be approximately five metres in height. It would be laid out such that its gable (6.1 metres in width) would face the public road, with the front elevation facing west towards a laneway and the adjoining long-established grouping of houses and other buildings. The finished floor level of the site would be significantly reduced in the immediate vicinity of the proposed house by between two and three metres and the land would accordingly be graded in the immediate vicinity, with the backdrop of the higher ground retained. The changes to the scale, form and layout of this proposed development are material and substantial over that which was previously refused. These material changes

contribute very significantly in the reduction of the visibility of the proposed development from the public realm and within the wider area.

- 7.4.3 Further to the above, I submit to the Board that the proposed development would clearly be understood, in terms of visibility, as being part of a distinct grouping of buildings which make up the traditional hamlet of Baile na bPoc. The site immediately adjoins this grouping of buildings, many of which were formerly houses, some of which remain in use and many of which have been converted to agricultural use. The proposed house would immediately front onto an established laneway associated with this grouping. When viewed from the public roads in the wider community the appeal site does not stand out as being separate from the grouping of houses. One could not reasonably determine that the proposed house, due to its location, form, layout and character, could be construed as a development that would make any distinct adverse visual impact on the landscape that would merit a refusal of permission due to injury to visual amenity.
- 7.4.4 With regard to the impact of the proposed development on protected views, I have examined carefully the visibility of this site from the regional and local road network in this area and from the nearby village of An Fheothanach. The site of the proposed development is not a distinctly prominent site. It is well enclosed and not in any way notable from the local road onto which it has frontage. From more distant views it is very clearly understood as being part of the grouping of established houses and their curtilages at Baile na bPoc. With due regard being given to the significant changes to the building form, scale, height and layout of the proposed development over that proposed previously, one could not reasonably come to the conclusion that the proposed house would have any adverse impact on protected views from any of the public roads in this area.
- 7.4.5 Overall, I am satisfied to conclude that the proposed development would not cause any serious injury to the visual amenities of this area and that it would not adversely impact on any views or prospects that are protected in this area.

8.0 Recommendation

- 8.1. I recommended that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to the modest scale of the proposed house, the proposed site preparation works and finished floor level of the house, its proposed orientation and layout, and proximity to the established grouping of houses and other buildings within the traditional settlement of Baile na bPoc, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be injurious to the visual amenities for the area, would not unduly impact on views and prospects listed for protection in 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, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented 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.

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 to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. Only one house shall be erected on the overall site. The existing temporary home shall be permanently removed from the site prior to the occupation of the house.

Reason: To ensure the preservation of the rural character and visual amenities of the area.

4. The roadside boundary shall be set-back in accordance with the submitted site layout plan. The proposed front boundary shall consist of a sod/stone wall to match the removed boundary. The area between the new set-back boundary and the edge of the carriageway shall be graded to the level of the existing road and shall be finished to match the existing road surface, at the expense of the applicant. The details of this work shall be submitted to and agreed in writing with the planning authority, prior to first occupation of the dwelling.

Reason: In the interest of visual amenity and traffic safety.

5. The existing well on the site shall be decommissioned and backfilled in accordance with details agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health.

6. The existing agricultural entrance to the site shall be closed up permanently in accordance with details agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

7. Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity

8. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

9. Water supply to the house shall comply with the requirements of Irish Water for such works.

Reason: In the interest of public health.

10. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas

or otherwise shall discharge onto the public road or to the stream which bisects this site.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage. Surface water shall be discharged to soakways within the site.

Reason: In the interest of traffic safety and to prevent pollution of watercourses.

11. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses (p.e. less than or equal to 10)", issued by the Environmental Protection Agency in 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 dwelling-house 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) 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.

12. 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.

Reason: In the interest of residential and visual amenity.

13. 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.

Kevin Moore
Senior Planning Inspector

30th September 2020