



An
Bord
Pleanála

Inspector's Report ABP-307430-20

Development	Bungalow and septic tank
Location	Curraheen, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/109
Applicant(s)	Simon Daughton & Katie Burke
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Transport Infrastructure Ireland
Date of Site Inspection	22 nd September 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located in a rural area approximately 6km south-west of Tralee in County Kerry. The site is accessed from a farm lane to the north of the N86 national secondary road which serves an existing house (the house of the applicant's grandmother), farm buildings and associated farmland. The site lies to the west of an existing shed and comprises a relatively flat grassed area. Other development in the vicinity includes the applicant's parents' house to the south-west. There is further extensive one-off housing in the vicinity.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a four bedroom bungalow with a stated gross floor area of 201.9 square metres. The house would be served by a septic tank system and a mains water supply.
- 2.2. Details submitted with the application included a site assessment report, a letter of consent from the landowner, a letter from the applicants giving the reasons for building on the site, and a design statement.

3.0 Planning Authority Decision

3.1. Decision

On 28th May 2020, Kerry County Council decided to grant permission for the proposed development subject to 14 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions and reports received. The proposed development within an established farm complex was seen to be sufficient to limit potential negative visual impacts within a Secondary Special Amenity zone. Due to the applicants residing in the nearby family house, it was considered that the effect on trip generation would be the same and it was concluded that the potential traffic hazard that would be associated with a new house at that location would not arise. It

was submitted that the proposed development would not be injurious to residential amenity and that the applicant had demonstrated compliance with the Development Plan's rural settlement strategy. A request for further information was recommended in accordance with the recommendation from the planning authority's Site Assessment Unit.

3.2.2. Other Technical Reports

The Site Assessment Unit of the Environment Section recommended that further information be sought, requesting the excavation of a deeper trial hole.

3.3. Prescribed Bodies

Transport infrastructure Ireland (TII) submitted that the proposal is at variance with official policy in relation to control of development on/affecting national roads and that it would create an adverse impact on the national road at this location.

A request for further information was made on 25th March 2020 and a response was received by the planning authority on 21st April 2020.

The subsequent reports to the planning authority were as follows:

The Site Assessment Unit had no objection to a grant of permission subject to the attachment of two conditions.

The Planner noted the receipt of further information and the response from the Site Assessment Unit and recommended that permission be granted subject to a schedule of conditions.

4.0 Planning History

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

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

Landscape

The site is located within an area zoned 'Rural Secondary Special Amenity'. This landscape area is considered sensitive to development. Development which does not integrate with its surroundings is not permitted in such areas.

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 N86 are protected views. Objective ZL-5 is as follows:

"Preserve the views and prospects as defined on Map No's 12.1, 12.1a– 12.1u." Map 12.1f includes the area in which the site is located.

Rural Settlement

The site is located within an area designated a 'Structurally Weaker Area' according to Map 3.1 of the Plan. The Plan objective relating to this rural area (Objective RS-12) is:

"Accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, waste water

treatment and the protection of important landscapes and environmentally sensitive areas.”

Development in Amenity Areas

Areas of Secondary Special Amenity are seen to constitute sensitive landscapes which can accommodate a limited level of development. The level of development will depend on the degree to which it can be integrated into the landscape.

Residential development in these areas are to be regulated in accordance with the provisions of Section 3.3.1 and Table 3.7.

The following provisions are to apply:-

- Individual residential home units shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character of the landscape or natural environment.
- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is therefore on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.
- Any proposal will be subject to the Development Management requirements set out in this Plan in relation to design, site size, drainage etc.

Table 3.7 relates to ‘Amenity Zoning Settlement Policy’. The following relates to Secondary Special Amenity Areas:

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.

Roads

Objectives for national roads include:

RD-17: Protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic & Transport Assessment Guidelines (2007).

The Plan states that the creation of an access or the intensification of usage of an existing access onto a National Road shall be only considered where it is in compliance with *Spatial Planning and National Roads Planning Guidelines (DoECLG January 2012)*. (Section 7.2.1.2 Access onto the National Routes)

The following is also noted from the Plan:

7.2.1.3 Access onto the N69, N70(Tralee/ Killorglin), N72 and N86

In relation to access onto the above routes, the Planning Authority has formed the opinion that due to the:-

- Rural and dispersed nature of the population,
- Average size of farm holdings in the County,
- Strategic nature of the National Secondary Routes, lack of alternatives, peninsular nature of the County and large number of existing enterprises located on these routes,

it is not possible, in relation to the N69, N70(Tralee/Killorglin), N72 and N86 to implement the policies and objectives of the Minister, as outlined in the Spatial Planning & National Road Guidelines 2012 and accordingly, the creation of a new access onto these Roads shall require compliance with all of the following criteria:-

- The Applicant is the son/daughter or favoured nephew/niece of a landowner inheriting the family farm or the proposed access relates to the development of a fixed resource or a renewable energy project and
- there is no suitable alternative non-national public road access available and

- the existing access to the landholding does not conform or cannot be made to conform with the NRA Design Manual for Roads & Bridges (DMRB Guidelines) and
- the development otherwise accords with the Development Plan.

Development resulting in the intensification of an existing access will be favourably considered where all of the following criteria can be complied with:-

- There is no suitable alternative non-national public road access available and the existing access conforms to the standards set out in the DMRB Guidelines and
- The development otherwise accords with the Development Plan and
- The development will contribute to the achievement of National objectives in the National Spatial Strategy (NSS) or Regional Planning Guidelines (RPGs) e.g. employment creation.

5.2. **Appropriate Assessment**

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**

The grounds of the appeal may be synthesised as follows:

- The grant of permission has the potential to compromise the safety and efficiency of the national road network at a location where the 100kph speed limit applies and is at variance with the provisions of official policy.
- The proposal will bring about an intensification of access onto and off the N86, regardless of the housing circumstances of the applicant, and is, therefore, at variance with official policy.
- The proposal is at variance with official policy to preserve the level of service, safety and carrying capacity of national roads and to protect public investment in such roads.
- There is a critical need to maintain the strategic function of the national road and to protect, maintain and ensure the safety of this finite and critical network resource.
- Restricting direct access and intensification of use of direct access to the high speed national road network can, and does, contribute to a reduction in road collisions and fatalities.
- Official policy identifies that the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users.
- The decision of the planning authority is of concern having regard to the intensity of rural development at this location accessing the national road and the highly trafficked, high speed section of national road concerned.
- The proposal is inconsistent with the provisions of Kerry County Development Plan, particularly Section 7.2.1.2 and Objective RD-17. It is noted that the 'exceptional circumstances' referenced in Section 7.2.1.3 of the Plan relating to the N86 were not agreed with TII and are at variance with the provisions of the "Spatial Planning and National Roads Guidelines for Planning Authorities".
- The provisions of these Guidelines should be considered to supersede provisions of the Development Plan that are at variance with them.
- The provisions of Section 7.2.1.3 of the Plan are directly conflict with Objective RD-17.

- No exceptional reason has been put forward which would justify a departure from standard policy and road safety consideration in this instance. This is a significant issue having regard to the existing concentration of dwellings accessing the N86 at this location.
- The planning authority had no available technical reports assessing the adequacy of the access to the N86 or any safety appraisal or demonstration that adequate sightlines can be achieved. This raises considerable safety concerns.
- The proposal, by itself and by the precedent a grant of permission would set, would endanger public safety by reason of traffic hazard due to the additional traffic, including turning movements that would be generated onto the N86 at a point where the 100kph speed limit applies, and would interfere with the free-flow of traffic on the road.
- TII seeks to ensure that official national objectives are not undermined and that the anticipated benefits of the investment made in the national road network are not jeopardised.

6.2. Applicant Response

The response to the appeal may be synthesised as follows:

- The applicants have fully complied with all the principles as set out in the Kerry County Development Plan.
- Having regard to the application proposals and the proposed landscaping programme, the development would not interfere with the character of the local landscape or any view or prospect of special amenity value or natural interest or beauty.
- Grants of permission at two locations east and west of the site already set a precedent and have not led to any traffic hazard.
- To operate the family farm efficiently it is essential for the applicants to reside on the holding. This is an exceptional circumstance and so should not set a precedent.

- Should the planning authority's decision be overturned it would have a negative effect on farm traffic movements, resulting in additional traffic being unnecessarily generated.
- With regard to the Spatial Planning and National Roads Guidelines reference to avoiding the creation of any additional access point from new development, it is acknowledged that there is no creation of any new access point.
- There would be no extra traffic generated by the proposed development as the applicants are already living there. It is further noted that the applicant's grandmother no longer drives.
- With regard to the unavailability of technical reports from the planning authority, the Planner's report is noted, inclusive of the road safety and traffic assessment.
- The applicants submit that two of the existing farm entrances could be closed up by way of planning condition if this was of benefit.

The response includes a Solicitor's letter referring to the farm inheritance and a landholding map, the applicant Katie Burke's birth certificate and home house deeds, a copy of farm deeds, further education certificates in farming, and a technical roads report, a letter from the applicant's grandmother, and an aerial photograph showing farm access points.

The submitted roads engineering report forms a technical roads and traffic assessment of the planning application. This report concludes that, based on the technical assessment provided, the proposed development would not adversely affect the carrying capacity, level of service, and the safe operation of the N86, would not intensify the use of the existing direct access onto the N86 and would not be at variance with either local or national policy. It is submitted that the existing access road is ideally located on the N86 and achieves far in excess of required TII sightlines in both directions on the N86.

6.3. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

7.0 Assessment

7.1. Introduction

I consider that the principal planning issues relating to the proposed development are rural housing need, the development in the context of national and local transportation policy, traffic impact and visual impact.

7.2. Rural Housing Need

- 7.2.1 I first note that there is an existing house on the farmholding. This is currently occupied by the grandmother of the applicant Simon Daughton. A Solicitor's letter in response to the appeal states that the lands at Curraheen have been transferred to him, namely Folio KY447. Details relating to that folio, referring to the applicant's grandmother's ownership of the lands, are attached with the response also. Further to acknowledging the existing house, I note that there is another existing house to the west of the laneway's access onto the N86. This house is the applicant Simon Daughton's parents' house. It is noted that the applicants reside at this location. It is reasonable to ascertain that this house would likely have originally been part of the farmholding at this location. Thus, it appears there are already two houses on the original landholding at this location. The potential for the new landowner and farmer of these lands to develop and expand an existing house to accommodate his residential needs (or indeed to replace an existing house if needs require) must be a realistic and sustainable option in the first instance. I would seriously question the need for a third house on this farmholding at such a sensitive location, i.e. directly accessing a national road and sited within a Rural Secondary Special Amenity Area.
- 7.2.2 I note that the applicant Simon Daughton is an engineer and farmer. His place of work is in Tralee. I acknowledge that he also farms the land at Curraheen. The applicant Katie Burke is a Garda based in Mallow in County Cork. The provisions of Kerry County Development Plan for persons seeking permission for a house in a Rural Secondary Special Amenity Area (Table 3.7) require the applicants to meet one of the following criteria:

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.

7.2.3 As a general observation, I submit to the Board that it is somewhat anomalous that a development plan could seek to facilitate a nephew or niece and would not seek to facilitate a grandson or granddaughter of a landowner. It is evident that the applicants cannot meet with this criterion of the development plan. It could reasonably be argued that the applicant Simon Daughton has a genuine rural employment need given that the response to the appeal indicates that he has now acquired his grandmother's farmholding which he farms. However, the actual *need* for another house at this location is questionable. Further to this, any such need must be tempered by an understanding that the applicant is an engineer who works in Tralee. Finally, there is no reason to dispute that the applicants' families have lived in the immediate locality for many years and that the applicants have been reared at this location. This is the criterion upon which the applicants are eligible for consideration for the development of a new house under the Development Plan. As a further general observation, I submit to the Board that this criterion allows for very extensive development of one-off houses in a rural area that is recognised as being particularly sensitive in landscape terms to the environmental detriment of such a landscape.

7.2.4 The site of the proposed development is in a location designated a 'Structurally Weaker Area' in the current Kerry County Development Plan according to Map 3.1 – Rural Area Types of the Development Plan. I submit to the Board that it appears that this designation at this location is somewhat misplaced or indeed mistaken. This map appears to show a 'Rural Area under stronger urban influence' extending west from Tralee into the sea at this location and not on the land to the north of the N86 where there is very extensive ribbon development. There can be absolutely no doubt, in my opinion, that this location, in such close proximity to the county town of

Tralee, is an area under strong urban influence and it is an area suffering as a consequence from very extensive, disorderly one-off, unsustainable housing. Recent mapping of this area ably demonstrates the unsustainable pattern of housing development in this area. In the context of a questionable need for yet another one-off house at this location, there must be an obligation to seek to accommodate the needs of the applicants by looking to further develop one of the existing houses already developed on this holding or alternatively replacing one of these houses if so required. One cannot reasonably keep facilitating more new housing in the manner that it is occurring in this location.

7.2.5 Further to the above, national planning policy as set out under the *National Planning Framework* published in February, 2018 is acknowledged. This includes the following:

- With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- 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.

7.2.6 From the details on the appeal file, it appears that the farmholding has facilitated the development of two houses and that the applicant does not have any justification that would merit permitting another house on these lands. With the opportunity to further develop or replace an existing house on these lands, I submit to the Board that the National Planning Framework objective of managing the growth of areas that are under strong urban influence to avoid over-development is not being attained in

this instance. The proposal would, thus, be in conflict with the National Planning Framework.

7.2.7 Having regard to the above, I consider that the site of the proposed development is unquestionably in an area under strong urban influence given its proximity to Tralee and the extent of residential development that has taken place. I must acknowledge the occupations of the applicants, while noting the applicant Simon Daughton also farms the holding at this location. The ability to make provision to meet the applicant's needs as a farmer can reasonably be facilitated by an already established house at this location or its replacement. I, therefore, do not accept that the applicants have a genuine rural housing need for a separate new house.

7.3. The Proposed Development in the Context of National and Local Transportation Policy

7.3.1 Guidance for planning authorities relating to development seeking vehicular access directly onto national roads outside of 50/60 kph speed limit zones for cities, towns and villages is set out in *Spatial Planning and National Roads: Guidelines for Planning Authorities*, published by the Department of the Environment, Community and Local Government in January 2012. The Guidelines note that proper planning is central to ensuring road safety.

7.3.2 It is apparent that, in meeting with the Guideline requirements as they apply to development plans, the inclusion of Objective RD-17 in the Kerry County Development Plan demonstrates the planning authority's intent in relation to controlling development seeking access onto the national road network outside of 50/60 kph zones of settlements. This objective seeks to protect the capacity and safety of the national road network in the county and ensure compliance with the Spatial Planning and National Roads Planning Guidelines.

7.3.3 Transport Infrastructure Ireland has ably demonstrated in its appeal how this proposed development is wholly contrary to national policy which seeks to avoid creation of additional accesses onto national routes outside of speed limit control zones for settlements, the intensification of accesses, and which seeks to uphold safety on national routes and to protect the carrying capacity of these routes. It is submitted that the development has the potential to compromise the safety and

efficiency of the national road network, that it will bring about an intensification of access onto and off the N86 regardless of the housing circumstances of the applicant, and that the proposal is at variance with official policy to preserve the level of service, safety and carrying capacity of national roads and to protect public investment in such roads. TII note that there is a critical need to maintain the strategic function of the national road and to protect, maintain and ensure the safety of this network resource.

7.3.4 Overall, it may reasonably be determined that the provision of a shared access to serve two residential properties will intensify vehicular turning movement at this location where the 100 kph speed limit applies. It is not particularly pertinent to note how such properties may or may not be occupied in the immediate term and how much vehicular traffic may or may not be generated in the immediate term. The proposal will intensify vehicular movements onto a national road outside the speed limit control of the nearby town of Tralee within a 100 kph speed limit zone and is contrary to national policy and to Kerry County Development Plan Objective RD-17.

7.3.5 Finally, I note that the 'exceptional circumstances' referenced in Section 7.2.1.3 of Kerry County Development Plan relating to the N86 were not agreed with TII and are at variance with the provisions of the "Spatial Planning and National Roads Guidelines for Planning Authorities". It is my submission to the Board that these development plan provisions must be ignored and regard be had to the national guidance which are in the interest of protecting public safety on national roads and the carrying capacity of these roads.

7.4. Traffic Impact

7.4.1 The proposed development seeks to provide a shared access for two houses directly accessing the N86 National Secondary Road at a location where a 100 kph speed limit applies. The increased vehicular traffic turning movements onto and off the national road at this location would cause a significant traffic hazard where a speed limit of 100 kph applies and at a location where traffic speeds are high. I accept the submission of Transport Infrastructure Ireland that this proposed development would have an adverse traffic safety impact.

7.4.2 Finally, I note Transport Infrastructure Ireland's submission that restricting direct access and intensification of use of direct access to the high speed national road network can, and does, contribute to a reduction in road collisions and fatalities. Clearly, the intensification of an existing access to the N86 would give rise to the generation of additional turning movements at Curraheen which would introduce additional safety risks to road users.

7.5. Visual Impact

7.5.1 I note that the site of the proposed development is located within an area zoned 'Rural Secondary Special Amenity', forming part of a landscape which is considered sensitive to development. Development which does not integrate with its surroundings is not permitted in such areas. I further note that views northwards from the N86 at this location in the direction of Tralee Bay are protected views.

7.5.2 I acknowledge the proposed siting of the development, set back from the public road and immediately west of farm buildings. It is my submission that the proposed single storey house would not be particularly visually prominent and would be understood as part of a cluster of farm buildings when viewed from the national road. Thus, it would have no notable impact on any protected views from this road and would not have any significant adverse visual impact within the Special Secondary Amenity zone.

8.0 **Recommendation**

8.1. I note the principal issues in the appeal relate to traffic safety and non-compliance with national policy as it relates to national roads. Further to this, I note the applicants' response to the appeal which clearly includes reference to the rural housing need associated with the development.

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

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the heavily trafficked National Secondary Road N86 at a point where the general speed limit of 100 kph applies and where the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.
2. The proposed development would militate against national policies on the control of access to national roads, as set out in *Spatial Planning and National Roads: Guidelines for Planning Authorities*, published by the Department of the Environment, Community and Local Government in January 2012, which seek to preserve the level of service and carrying capacity of national roads, to protect public investment in same, and to control frontage development that adversely affects road safety. Furthermore, the proposed development would conflict with Objective RD-17 of Kerry County Development Plan 2015-2021 which seeks to protect the capacity and safety of the national road network in the county and ensure compliance with the *Spatial Planning and National Roads Planning Guidelines*. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the location of the site within an area that is under strong urban influence in close proximity to the town of Tralee and to the provisions of the National Policy Objectives of the National Planning Framework, which seek to manage the growth of areas that are under strong urban influence to avoid over-development and 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, having regard to existing housing on the farmland of which the site forms a part and the opportunity to redevelop or replace such housing to meet housing need, the applicants have not demonstrated an economic or social need for an additional house on the holding, and, therefore, do not comply with National Policy Objectives. The proposed development, in the absence of any identified locally

based need for a further house on the landholding, 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 rural policy provisions of the National Planning Framework, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

30th September 2020