



An  
Bord  
Pleanála

## Inspector's Report ABP.308819-20

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<b>Development</b>	Construction of a single dwelling house served by a septic tank and percolation area and to construct an access road
<b>Location</b>	Kells, Cahersiveen  Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/836
<b>Applicant(s)</b>	Thomas O'Connor
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Thomas O'Connor
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	8 <sup>th</sup> June 2021
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located in a scenic rural area, approx. 1km to the west of the settlement of Kells, which in turn is approx. 1km to the northwest of the N70 (Ring of Kerry). The site is accessed by means of a steep winding road which ascends from Kells Bay/Beach and travels westward along the foothills of Knocknadober Mountain, overlooking Dingle Bay. There is a caravan park adjacent to the beach and several holiday homes dotted along the local roads in the vicinity of the site. It is located on the southern side of the local road and is accessed from a private roadway which serves 2-3 houses. It is a rural area which is predominantly agricultural but there are a number of single houses and farmhouses scattered around the countryside in the vicinity. There is a row of approx. 8 existing houses fronting the local road on the southern side of the carriageway.
- 1.2.** The site area is given as 0.786ha. The site is rectangular in shape and extends northwards to the rear of the sites fronting the local road. The site is situated between two existing houses, one of which (to west) is owned and occupied by the applicant's father. The lands are quite elevated above the road but the ground levels fall away to the north towards Kells Lough. It forms part of a landholding which extends northwards to the sea and westwards for about 400m south of the local road. The site and adjoining lands are visible from the local road to the south of Kells, which is approx. 1km to the east, and from the approach road leading from Kells Bay.
- 1.3.** The site is very rocky and exposed and is covered with a heather type of vegetation with a peaty soil. The ground levels fall away to the north within the site with a difference of c.5m. At the time of my inspection it was raining, and I noted that the site was very poorly drained with extensive ponding and sodden peaty soils interspersed by rock throughout, making it impossible to walk across. The access to the site is currently gained from the father's driveway to the front of his house. The site is located within a 300m wide wedge of land between two European designated sites, namely Iveragh Peninsula SPA (004154) to the north and Killarney National Park Macgillycuddy Reeks and Caragh River Catchment SAC (000365) to the south. Thus, the site is situated within 100m of the SPA to the north and within 40m of the SAC to the south.

## **2.0 Proposed Development**

- 2.1.** It is proposed to erect a dwelling on the site, which would be at the southern end of the site, immediately adjacent to the two existing dwellings on the adjoining sites to the east and west. The dwelling would be accessed by means of the existing entrance to the private lane serving the applicant's father's house to the west and from there, by means of a new driveway along the northern boundary of the adjoining site, entering the appeal site in the north-western corner, and travelling up the western boundary to the site of the proposed dwelling. The site layout plan (submitted to the PA on 19/12/17) shows a conventional septic tank and percolation area to the north of the proposed house. The proposed development incorporates cutting and filling on the site to achieve the proposed FFL of 20.75m OD.
- 2.2.** The proposed dwelling is designed as a single-storey house with four bedrooms and a study. The floor area is given as 231sq.m and the ridge height as 5.7m. The overall building envelope measures c.24m x 14.3m. It would be stone clad with a slate roof. It is proposed to erect an earth mound (1.5m high) to the north of the dwelling and percolation area which would be L-shaped running across the middle of the site and up part of the eastern boundary. It is proposed to retain a number of single trees and to plant rows of trees (birch, mountain ash and alder) along the northern boundary, within the earth mound and to the west of the proposed driveway.
- 2.3.** The application was accompanied by a letter from the applicant setting out his housing need and background to landholding, copies of the land registry details relating to the landholding, together with a letter from his father giving consent to the application. It was also accompanied by a letter from the applicant's engineer together with a 'Hydrogeological Assessment' by Dr. Robert Meehan in respect of the proposal to install a septic tank and percolation area, as well as a Site Characterisation form and photographs. It is stated that the applicant lives at his father's house and that he is employed locally.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for two reasons which were based on the visually amenity and rural settlement policy. The reasons for refusal read as follows:

1. The site is located in an open and exposed landscape in a scenic area which is zoned Rural Secondary Special Amenity in the Kerry County Development Plan 2015-2021. The proposed erection of a dwelling at this location would contribute to the overdevelopment of the rural area and would interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry County Development Plan 2015-2021. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The P.A. is not satisfied, on the basis of the submissions made in relation to the application, that a rural housing need has been demonstrated in accordance with Section 3.3.2.2 Rural Housing Policy of the Kerry County Development Plan 2015-2021, having regard to the location of the application site in an area zoned Rural Secondary Special Amenity and designated a Stronger Rural Area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report noted the location of the site in a **Stronger Rural Area** and in an area designated as **Rural Secondary Special Amenity**. It was further noted that the applicant's father had previously obtained permission to retain his dwelling house on revised site boundaries in order to create this site and that subsequently, the applicant had applied for permission to construct a house on the site on three occasions, (11/986, 14/433 and 18/718), and that permission had been refused on each occasion. The reasons for refusal include grounds of visual amenity and non-

compliance with settlement policy, inadequate disposal of effluent treatment and poor on-site ground conditions together with the proximity to the European sites.

It was considered that as the site is located on an open and elevated position in a sensitive rural landscape, the proposed house would not integrate into the landscape and would constitute an additional dwelling in a rural area where there is already a high level of residential development. The Area Planner was not satisfied that the applicant had demonstrated adequate occupancy/intrinsic ties to the area. It was, therefore, considered that the proposal did not comply with the Rural Settlement policy regarding areas zoned Rural Secondary Special Amenity.

It was noted that the access roadway to the site had not been included within the site boundary but a right-of-way is shown over the father's land. The positive SAU report was noted in respect of the proposed effluent disposal and no objections were raised to the proposed surface water disposal to a soakpit. It was considered that EIA was not required given the nature, scale and location of the project. Appropriate Assessment Screening was carried out and it was concluded that there is no likely potential for significant effects to Natura 2000 sites.

Refusal was recommended for reasons which were generally in accordance with the reasons given by the P.A. in its decision.

### 3.2.2. **Other Technical Reports**

**Environment** – The Planner's Report indicated that the SAU had raised no objection subject to conditions. However, a copy of the SAU report has not been forwarded by the P.A.

**County Archaeologist** – there are no recorded monuments in proximity to the site. However, given the scale of the site (greater than 0.5ha), it is recommended that pre-development testing should be carried out across the site and a report submitted prior to the grant of any permission.

**Housing Estates Unit** – concern was raised regarding the access road, which serves more than 2 houses and as such should be included within the red line. It was considered that the access road should be surfaced with 80mm bituminous macadam surfacing and that drainage details would be required. Sightline triangles and a planning bond were also requested and it was stated that recommendations for Site Development Works for Housing Areas need to be conditioned.

### 3.3. Prescribed Bodies

**Irish Water** – It is confirmed that a water supply is available from Kells GWS.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

**PA 11/704** – planning permission granted to applicant's father to retain house and private garage within revised site boundaries. The Area Planner's report indicates that this facilitated the creation of the site that is currently the subject of the appeal.

**PA 11/986** – planning permission refused to same applicant for house and septic tank on the site.

**PA 14/433** - planning permission refused to same applicant for house and effluent treatment tank and polishing filter. There were 4 no. reasons for refusal. The first related to inadequate disposal of effluent on the site due to poor soil conditions. It is noted that the depth to the water table was indicated as 1100-1700mm below ground level and that the iron pan was encountered at depths of 400mm-1000mm. The second reason related to visual amenity given site's exposed and scenic location which would result in overdevelopment of the area and interference with the character of the landscape. The third reason was based on failure to comply with the rural settlement policy in that adequate rural housing need had not been demonstrated. The fourth reason related to the proximity of the site to 2 European sites and the poor ground conditions which meant that the P.A. was not satisfied that the proposal would not result in negative environmental effects.

**PA 18/718** - planning permission refused to same applicant for house and effluent treatment tank and polishing filter. There were 5 reasons for refusal. The first four reasons for refusal were similar to those relied upon in 14/433, and the fifth reason related to the access which was proposed through the family home, and which was considered to be inadequate, would involve encroachment and would seriously injure the residential amenities of the adjoining property.

## 5.0 Policy Context

### 5.1. National Planning Framework

**National Policy Objective 15** Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and 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** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

### 5.2. Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs. Rural generated housing includes sons and daughters of families living in rural areas and having grown up in the area and perhaps seeking to build their first home near the family place of residence.

### 5.3. Development Plan

#### **Kerry County Development Plan 2015-2021**

In terms of Rural Settlement Policy, (3.3), the site is located in a **Stronger Rural Area** which is described as one where population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. The key challenge is stated to be to strike a balance between residential development in the towns/villages and in the rural areas.

**Objectives RS1-RS6**, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

There are two further objectives which relate specifically to Stronger Rural Areas, namely, **RS-10** which seeks to facilitate the provision of dwellings for people who are intrinsic to the area and **RS-11** which seeks to consolidate/sustain the stability of the rural population and to provide a balance between development activity in urban areas and villages and the wider rural area.

Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Secondary Special Amenity Area**, which are described as constituting sensitive landscapes which can accommodate a limited level of development, which will depend on the degree to which it can be integrated into the landscape. This is described as an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to SSAAs. These include a requirement for dwellings to be designed sympathetically to the landscape, to be sited such that they do not negatively impact the landscape, that they are not unduly obtrusive in terms of siting and design, with an emphasis on the retention of trees and hedgerows. In terms of settlement policy, sons/daughters or favoured nieces/nephews of the traditional landowner (in ownership for 10 years) will be required, or demonstration of genuine rural employment need or family living in locality prior to January 2003 with the applicant having been reared in the locality.

#### **5.4. Natural Heritage Designations**

The site is within 15km of five European Sites. These are

- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) – c.40m to south.
- Iveragh Peninsula SPA (Site code 004154), c.100m to north.

- Castlemaine Harbour SPA (Site Code 004029) - c.5km to north-east.
- Castlemaine Harbour SAC (Site code 000343) - c.10km to north-east.
- Valentia Harbour and Portmagee Channel SAC (Site code 002262) c.12km to the south-west.

## **6.0 The Appeal**

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

The first party appeal was submitted by Frank Curran Engineers on behalf of the applicant. The main points raised may be summarised as follows:

#### **1. Visual amenity**

- The proposed development is located between two dwellings and can therefore be classified as infill development. The two existing houses cannot be seen from the public road. Photographs are enclosed to demonstrate this. The local road is a minor road which is a cul-de-sac (L4015).
- The site is zoned Secondary Special Amenity and forms part of a family landholding that has been owned by the family since the 1940s/1950s.
- The development of the site would be sustainable as the services are already provided to the applicant's father's house. It is served by the Kells Group Water Scheme and it is suitable for a septic tank and percolation area. The applicant is living and working in the area permanently since 2010.

#### **2. Rural Settlement Policy**

- The applicant lives and works in the local area. With the grant of permission for the South Kerry Greenway, this will ensure the applicant's employment into the future in the area. As his father is elderly, he will be living closeby and will be able to assist his father and also make a contribution to the local community and reverse the trends of de-population in South Kerry.
- The applicant's family has lived in the area for many decades. The landholding is presently farmed by his uncle, Humphry O'Connor. The site has been owned by his father for approx. 30 years. Thus the O'Connor family are

an intrinsic part of the community and the proposal complies with the requirements for a Secondary Special Amenity Area and Objective RS-10 of the CDP.

- The proposed development, together with the applicant's father's house and the existing house to the east would consolidate the existing development in the area and would form part of a cluster of development, which would comply with Objective RS-11 of the CDP. Caherciveen is 9km away, which is the nearest settlement. The proposal would comply with the settlement policy for Stronger Rural Areas.

## **6.2. Planning Authority Response**

The P.A. has not responded to the grounds of appeal.

## **6.3. Observations on the Grounds of Appeal**

None received.

## **7.0 Assessment**

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Compliance with Rural Settlement Policy
- Impact on visual amenity
- Other matters
- Environmental Impact Assessment
- Appropriate Assessment

## **7.2. Rural Settlement Policy**

7.2.1. National guidance as set out in the National Planning Framework and in the Sustainable Rural Housing Guidelines emphasise the need to distinguish between areas that are under urban influence or pressure and other rural areas and in addition, to differentiate between urban and rural generated housing need. NPF

Objective 19 also seeks to consolidate development in smaller towns and villages in order to strengthen the viability of such rural settlements.

- 7.2.2. The designation 'Stronger Rural Area' as set out in the current Kerry CDP, is described as one where the population levels are generally stable, and the key challenge is to maintain a balance between the development activity in the urban areas and housing proposals in the wider rural area. The main objective of the Stronger Rural Area (CDP) is to achieve a balance between the need to provide for housing in rural areas and maintaining the stability of population in the villages and urban areas. Objectives RS-10 and RS-11 seek to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community as well as consolidating and sustaining the stability of the rural population. The applicant must also demonstrate that the proposed dwelling shall be used as a permanent place of residence.
- 7.2.3. The policies in the Kerry CDP 2015-2021 and in the West Iveragh LAP 2019-2025 establish the importance of tourism in Kerry with 20% of the County's workforce employed in tourism. The South Kerry Coast is described as having a distinctive natural beauty and a strong tourist base. It is identified as one of the Country's premier tourist routes with the Ring of Kerry and the Wild Atlantic Way and the route of the proposed South Kerry Greenway traversing through the area. Within this context, the settlement pattern of the area has demonstrated that there has been an overall decline in population in the region, but at the same time, a significant level of one-off housing has been developed in the countryside, a considerable proportion of which were holiday homes. Between 2011 and 2017, c.82% of all housing development took place in the countryside as one-off houses, and in some rural areas approx. 50% of houses were holiday homes. This trend can impact the vitality of communities and affect local demand for housing. The commuting trends further exacerbate this with a strong dependency on the larger towns outside the area such as Tralee, Killarney and Killorglin. As a result, the main settlements in the area, Cahersiveen and Waterville, have had exceptionally low growth. Thus, the strategy of the WILAP is to focus on the renewal and development of existing built-up areas within the existing towns and villages to build up a critical mass to make them attractive places in which to live and work rather than a continual sprawl of development into the countryside.

- 7.2.4. The Kells Bay and Kells Beach areas are very popular tourist destinations. The proximity of the site to the coast and the elevated position overlooking the sea means that the location of the site is one where is likely to be under pressure for holiday homes. In addition, the WILAP states that the commuter trends for Cahersiveen extend as far as Kells. It is evident from the pattern of development in the vicinity of the site, with a row of 7 or 8 houses fronting the road and further row of houses behind, that the area around the site has been subject to such pressure. Thus, the location of the site is one which has experienced, and will continue to experience, sustained pressure for one-off housing in the countryside. The landscape in which the site is situated is very scenic and attractive with a designation of Secondary Special Amenity. As such, it has a limited capacity to absorb new development and is one where urban generated housing and/or holiday homes should be directed into the urban settlements in order to strengthen the attractiveness of these centres and also to protect the countryside.
- 7.2.5. The supplementary information provided by the applicant indicates that he is not from the area, being brought up in Dublin, but has links to the area by reason of relatives who he visited during the summer holidays. His father is from the area, having been brought up there, but had left Kells in the early 1970s to live and work in Dublin. However, the father returned to the area and built the house next door, on the applicant's uncle's landholding, in 2005. The applicant states that he moved to Kells in 2010 and moved in with his father and that he is now living and working locally. The Board should note, however, that no documentary proof has been provided to substantiate the applicant's statements that he has being living in the area since 2010 and that he works locally. I would have to agree with the planning authority that he has not adequately demonstrated that he has a rural generated housing need to live at this location.
- 7.2.6. Notwithstanding this, even if it was accepted that the applicant may meet the criteria for being an intrinsic part of the community, there does not appear to be any specific need to reside at this location on the basis of an economic or social imperative, as set out in NPF Objective 19. In such circumstances, an additional house at this location would add to an already unacceptable density of development that would exacerbate and consolidate the pattern of haphazard rural housing in an unserved area. At the same time, it would have an adverse impact on the considerable

challenges facing Stronger Rural Areas to consolidate the growth of small towns and villages in these areas. This would not accord with NPF Objective 19 or local policy both of which require that due consideration is given to the viability of small towns and rural settlements in facilitating the provision of single housing in the countryside outside areas of urban influence. The proposed development should be refused on this basis, as it is not in accordance with the rural settlement policies for the area.

### **7.3. Visual amenity**

- 7.3.1. It is proposed to erect a dwelling on a site which is situated between two existing houses, and which is located in an area designated in the CDP as a Rural Secondary Special Amenity Area. These areas are described as sensitive landscapes which can accommodate a limited amount of development. The level of development is dependent on matters such as the degree to which a development can be integrated into the landscape. It is noted that this amenity policy is additional to the rural settlement policy, and the CDP states that where there is an overlap, the amenity policies will take precedence. Development in such areas are required to be designed sympathetically to the landscape, to be located on sites that do not negatively impact on the landscape and such that they are not unduly obtrusive in their siting and design.
- 7.3.2. The applicant claims that the proposed dwelling would not be seen from the local road, that it is well screened and that it is proposed to screen it further with additional hedging and tree planting. However, the site is located in an elevated position and the existing houses on either side are visible from the surrounding area. The proposed dwelling would add to the existing houses forming a row at an elevated location behind an existing row of houses, which would accentuate the linear form of development and create visual clutter on the hillside. In addition, the site overlooks the highly scenic Kells Bay area on the southern coast of the Dingle Peninsula, and would be on a ridge above Kells Lough to the south (a local fishing destination).
- 7.3.3. The siting of the proposed dwelling, in conjunction with the existing development and landscape screening, in this exposed and elevated scenic landscape, in close proximity to Kells Bay and to the Ring of Kerry tourist route and overlooking Kells Lough which are important tourist destinations, would not be in accordance with the Objective ZL-1 of the development plan which seeks to protect such Rural

Secondary Special Amenity Areas. I would agree with the P.A., therefore, that the proposed development would constitute a highly visible and obtrusive feature in this sensitive landscape. It is considered that the proposed development should be refused on these grounds.

#### **7.4. Other matters**

##### **7.4.1. Wastewater disposal**

7.4.2. A Site Suitability Assessment Report and a Hydrogeological Report were submitted with the current application. The P.A. had previously refused permission on a number of occasions on several grounds, one of which related to the very poor drainage quality of the soil on the site which was described as covered by peaty topsoil and abundant rock outcropping. It is noted that detailed reports, based on visual inspections, were submitted by the SAU which had raised significant concerns regarding the suitability of the site for effluent disposal. It is noted that the depth to the water table was indicated as 1100-1700mm below ground level, depth to bedrock as 1000-1300mm and that the iron pan was encountered at depths of 400mm-1000mm. It was considered that there was insufficient depth of suitable permeable subsoil available between the iron pan and the groundwater aquifer. On the basis of the information on file, the P.A. was not satisfied that the site was suitable for disposal of effluent by means of a septic tank and percolation area as it would pose an unacceptable risk to the groundwater aquifer and to public health.

7.4.3. I would refer the Board to the Reports of the Planning Authority Engineers dated 29<sup>th</sup> July 2014 (Reg. Ref. 14/433) and the 6<sup>th</sup> September 2018 (Reg. Ref. 18/718), in particular. Notwithstanding these robust statements, the decision on the current application did not include this reason for refusal. There is little insight into why the planning authority had formed the view that the reason for refusal that had been relied upon on several occasions previously appeared to have been satisfactorily addressed.

7.4.4. The Hydrogeological Report states that the poor drainage conditions relate to the topsoil layer only and that there is an iron pan beneath this, which in turn overlies soils that are well drained. It was further stated that the 'rock outcropping' relates to boulders protruding from the moraine ridge which runs between the public road and Kells Lough, upon which the proposed dwelling is to be located (See Plate 1 – page

3- of the Report). Thus, bedrock does not outcrop across the site. The following points are made in relation to the soil conditions, the iron pan and the proposed method of effluent disposal on the site :-

- The soil type on the site comprises a black topsoil overlying clay, which in turn overlies an iron pan (peaty podzol), and this overlies a permeable mineral soil composed of either silty sandy gravel or gravelly silty sand.
- The iron pan is present mainly at a depth of 600-700mm below ground level, but its depth varies across the site. For small sections of the site, the iron pan dips down to 1.1m. It is therefore proposed to excavate the trenches for the percolation area down to a depth of 1.15m. This will ensure that iron pan is broken for the entire percolation area. The treated water from the septic tank will discharge into the sub-soil.
- Bedrock does not outcrop across the site but is erratic. The depth to bedrock is stated to be >2.1m and the water table is present at a depth of 2.5m. Thus, there will be an unsaturated layer of 1.35m between the bottom of the trenches and the top of the water table on the site and the minimum depth of unsaturated permeable subsoil to bedrock and the water table beneath the distribution gravel is 1.2m. These depths comply with the requirements of an R2 Response and will therefore comply with the EPA Code of Practice.
- The percolation rate for the subsoil on the site is stated as 27.4 which is acceptable for a conventional septic tank. This T value and the depth of soil above bedrock (>1.2m) means that groundwater quality in the underlying aquifer will not be affected.

7.4.5. The submitted documents essentially state that there is a peaty topsoil overlying an iron pan with a well-drained subsoil beneath, and that provided that the percolation area trenches are located below the iron pan and within the more permeable subsoil, the proposed development is suitable for drainage by conventional septic tank and that it will not have any adverse effect on the environment or on public health. Notwithstanding the conclusions of the reports that the proposed wastewater treatment system would comply with the EPA guidance, there are a number of outstanding concerns regarding the suitability of the site for on-site disposal of effluent.

7.4.6. The top layer of the site seems to comprise saturated peat bog overlying an iron pan. The gradient of the site is quite steep with levels falling by up to 8 metres in a northerly direction and by up to 5 metres in a southerly direction. At the time of my inspection, the site was completely saturated and did not accord with the description or photographs contained in the submitted reports of being soft but firm. The ground conditions could not be described as 'firm' and it was not possible to walk on it, with extensive levels of surface water ponding visible. The iron pan is reported to be variable in depth and is likely to be undulating through the site. The planning reports in relation to 14/433 and 18/718 indicated a shallower depth of the iron pan as well as the depth to the water table and bedrock based on visual inspections of trial holes in similar locations by the P.A. engineers. Thus, it is likely that surface water will continue to run-off along the top of the iron pan down the hill and enter the percolation area, with the possibility of inundation. Given the significant site constraints, together with the likely quality of effluent being discharged from a conventional septic tank system, it is considered that the risk still exists in terms of the groundwater aquifer, which is of extreme vulnerability, and to public health, notwithstanding the availability of the group water scheme.

7.4.7. It is considered, therefore, that the Board would not be satisfied that the site can be drained satisfactorily by means of a conventional septic tank and percolation area, and the proposed development would, therefore, be prejudicial to public health and pose a risk to groundwater. However, as the planning authority has not included this matter as a reason for refusal in its decision, the Board may view this as a new issue. Should the Board wish to grant permission for the development, it may, therefore, wish to seek further information on the matter from the first party and from the planning authority.

7.4.8. **Access to the site**

The current proposal includes the provision of a new access to the site, as opposed to traversing the driveway of the adjoining site. It is noted that the plans and particulars submitted with the grounds of appeal have addressed one of the concerns raised by the Housing Estates Unit in that the access has been shown within the red line boundary. However, I would not agree that the laneway should be surfaced with tarmac given the elevated and exposed nature of the site.

#### 7.4.9. **Archaeology**

The County Archaeologist has pointed out that notwithstanding the lack of any known archaeology or recorded monuments in proximity to the site, given its scale (0.76ha), it was recommended that pre-development testing should be carried out across the site and that a report be submitted prior to the grant of any permission. This information was not requested as the P.A. decided to refuse permission. It is considered, that should the Board be minded to grant permission, this information should ideally be requested in advance of determination, but at least should be required as a condition of any such permission.

#### 7.5. **Appropriate Assessment**

7.5.1. The P.A. reports screened out appropriate assessment. An AA Screening was not submitted with the application, although the applicant's agent stated that the matter could be addressed if required. It was noted in a previous section of my report, that the site is located approximately 40m from a Natura 2000 site, namely, Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment cSAC (000365) and is sited c.100km from another Natura site (Iveragh Peninsula SPA). The closest part of the SAC is the lake, Kells Lough, which is down-gradient of the site of the proposed house. This is likely to be a corrie lake, which are generally oligotrophic. The appeal site is also covered in heaths and grasslands and may form part of a blanket bog. Although the site is not within the designated areas, it is in close proximity in an undulating topography with potential pathways via surface water and groundwater.

7.5.2. The Qualifying Interests of the **Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment cSAC (000365)** are as follows:

Oligotrophic waters containing very few minerals of sandy plains

Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletae uniflorae and/or Isoeto-Nanojuncetea

Water courses of plain to montane levels with Ranunculion fluitantis and Callitriche-Batrachion vegetation

North Atlantic wet heaths with Erica tetralix

European dry heaths

Alpine and boreal heaths

*Juniperus communis* formations on heaths or calcareous grasslands

Calaminarian grasslands of the *Violetalia calaminariae*

*Molinia* meadows on calcareous, peaty or clayey-silt-laden soils

Blanket bogs

Depressions on peat substrates of *Rhynchosporion*

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

Alluvial Forests with *Alnus glutinosa* and *Fraxinus excelsior*

*Taxus baccata* woods of the British Isles

*Geomalacus maculosus* (Kerry slug)

*Margaritifera margaritifera* (Freshwater Pearl Mussel)

*Euphydryas aurinia* (Marsh Fritillary)

*Petromyzon marinus* (Sea Lamprey)

*Lampetra fluviatilis* (River Lamprey)

*Salmo salar* (Salmon)

*Rhinolophus hipposideros* (Lesser Horseshoe Bat)

*Lutra lutra* (Otter)

*Trichomanes speciosum* (Killarney Fern)

*Najas flexilis* (Slender Naiad)

*Alosa fallax killarnensis* (Killarney Shad)

The conservation objective for this site is to maintain or restore the favourable conservation condition of the habitats and species listed as Special Conservation Interests for this SAC.

7.5.3. The Qualifying interests of the **Iveragh Peninsula SPA (004154)** are as follows:

Fulmar (*Fulmar glacialis*)

Peregrine (*Falco peregrinus*)

Kittiwake (*Rissa tridactyla*)

Guillemot (*Uria aalge*)

Chough (*Pyrrhocorax pyrrhocorax*)

Apart from sea cliffs, the site includes areas of dry heath, wet heath, upland acidic grassland, dense bracken, semi-improved and improved pasture grassland and streams. The site supports an internationally important population of breeding Chough, which is a Red Data Book species that is listed on annex I of the EU Bird Directive and particularly favour the Iveragh peninsula.

The conservation objective for this site is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

- 7.5.4. The other European sites in the vicinity are a minimum of 5km from the site and given the distances involved and the nature and scale of the proposed development, the likelihood of impacts on these sites can be ruled out..
- 7.5.5. The site of the appeal was extremely wet underfoot when inspected on the 8<sup>th</sup> June 2021. It had the appearance of a blanket bog with the frequent occurrence of rocks, which the submitted documents indicate are erratic deposits rather than rock outcrops. There was a considerable amount of surface water lying on the site at the time of my inspection. The soil cover appeared to be composed of a mixture of heaths, heathers and grasslands over wet bog. The site is elevated with gradients falling away to the north towards the SPA and to the south towards the SAC, with an iron pan beneath the topsoil layer. It is considered that it is not possible to rule out whether there is hydrological link to either of the European sites by reason of surface water and/or groundwater run-off in the direction of one or both of the Natura sites.
- 7.5.6. The nature of the proposed development is such that it will involve significant levels of cutting and filling and the excavation of part of the site for the proposed percolation area. It will also involve installing an effluent treatment system and a new driveway, as well as the upgrading of an existing driveway, both of which travel upslope in a southerly direction. Construction works could therefore result in run-off of sediment and contaminated waters from the construction site. The unsuitability of the site for drainage of effluent, as discussed in the previous section, would also pose a risk of groundwater contamination. Given the nature of the site, with poor ground conditions based on a shallow peaty soil overlying an iron pan, the gradient

of the site and the extensive surface water ponding on the site, together with the nature of the proposed development, the proximity to the European sites, and that a hydrological link to the SAC cannot be ruled out, it is considered that in the absence of objective scientific information, significant effects on the European sites cannot be excluded out at this stage.

- 7.5.7. The project is not directly connected with or necessary for the management of the European sites. It is not situated within either of the designated European sites and as such there would be no direct effects. However, it is uncertain whether the project is likely to have a significant indirect effect either individually or in combination with other plans or projects on the European sites in view of the sites' conservation objectives. On the basis of the information provided with the application and appeal, and in the absence of a NIS, the Board cannot, therefore, be satisfied that the proposed development, individually or in combination with other plans or projects, would not result in adverse effects on the integrity of Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment cSAC (000365) and Iveragh Peninsula SPA (004154) in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

## **7.6. Environmental Impact Assessment**

- 7.6.1. The proposed development is for the construction of a single dwelling house and wastewater treatment system on a greenfield site. Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **8.0 Recommendation**

- 8.1. It is recommended that planning permission be **refused** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The site is located in a Stronger Rural Area which has experienced intense pressure for urban generated housing development and where it is the policy of the planning authority, as set out in the settlement strategy contained in the Kerry County Development Plan and the Iveragh Peninsula Local Area Plan, to facilitate the rural housing needs of people who are intrinsic to the local area while directing urban generated housing into towns and villages and where it is Government policy, under National Policy Objective 19 of the National Planning Framework Plan, to avoid over-development of rural areas and to have regard to the viability of smaller towns and villages in facilitating the provision of single houses in the countryside. Having regard to these national and local policies it is considered that the applicant does not come within the housing need criteria as set out in the guidelines and in the Development Plan for a house at this location, and the Board is not satisfied that the housing need could not be satisfactorily met in an established settlement. The proposed development would give rise to an excessive density of development, would contribute to a suburban form of development in a rural area and would militate against the preservation of the rural environment, the efficient provision of public services and infrastructure and the viability of smaller rural settlements. The proposed development would, therefore, be contrary to national and local policy and to the proper planning and sustainable development of the area
2. The site is located in an elevated position in an area designated in the current Kerry County Development Plan 2015-2021 as an area of Rural Secondary Special Amenity, by reason of its sensitive landscape quality, in relation to which policy Objective ZL-1 seeks to control development in order to protect the landscape. It is considered that the construction of a house on the site, in conjunction with existing adjacent development, would result in a highly visible and obtrusive feature which would be detrimental to the high scenic amenity of the area. The proposed development would, therefore, contravene this policy and would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the soil conditions, the gradient of the site and the extensive surface water ponding on the site, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposal to excavate below the iron pan. The proposed development would, therefore, be prejudicial to public health.
  
4. On the basis of the information provided with the application and appeal, and in the absence of a NIS, the Board cannot, therefore, be satisfied that the proposed development, individually or in combination with other plans or projects, would not result in adverse effects on the integrity of Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment cSAC (000365) and Iveragh Peninsula SPA (004154) in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

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Mary Kennelly  
Senior Planning Inspector

24<sup>th</sup> June 2021