



An  
Bord  
Pleanála

## Inspector's Report ABP-309056-20

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| <b>Development</b>                  | House and septic tank                      |
| <b>Location</b>                     | Ballinknockane, Camp, Tralee, County Kerry |
| <b>Planning Authority</b>           | Kerry County Council                       |
| <b>Planning Authority Reg. Ref.</b> | 20/942                                     |
| <b>Applicant(s)</b>                 | Philip & Jasmin Stallard                   |
| <b>Type of Application</b>          | Permission                                 |
| <b>Planning Authority Decision</b>  | Refuse                                     |
| <b>Type of Appeal</b>               | First Party                                |
| <b>Appellant(s)</b>                 | Philip & Jasmin Stallard                   |
| <b>Date of Site Inspection</b>      | 16 <sup>th</sup> February, 2021            |
| <b>Inspector</b>                    | Kevin Moore                                |

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development is located to the south of the R560 Tralee-Castlegregory Road and to the north of the village of Camp in County Kerry. It comprises the front section of a field which slopes in a northerly direction towards the road. It is enclosed by hedgerow along its road frontage and east flank and by an earthen bank along its west flank. The site is bounded to the east, west and south by agricultural lands. The 60kph speed limit zone for Camp commences a short distance to the east of the site's frontage. There are patterns of ribbon development and some sporadic houses in the vicinity. Camp community centre and sports grounds, accessed from a local road, are located to the north-east.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the construction of a dwelling and the installation of a septic tank system. The dwelling would be a four bedroom dormer-type dwelling with a stated floor area of 269 square metres. It would be served by a mains water supply and a septic tank system.
- 2.2. Details submitted with the application included a design statement which seeks to address the reasons for refusal of a previous planning application, a completed site characterisation form, a letter from the landowner permitting the making of the application, and correspondence relating to the applicant's rural housing need.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 1<sup>st</sup> December 2020, Kerry County Council decided to refuse permission for the development for three reasons relating to adverse visual impact, the lack of rural housing need, and traffic safety impacts.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted the site's planning history, development plan provisions, and reports received. It was considered that the development would represent a new intrusion of residential development into an open, exposed and unspoilt rural area and would set a negative precedent for further development. Noting the house would be developed on a sloping part of the site, it was submitted that excavations required would cause scarring of the landscape, causing visual intrusion. It was also submitted that it was not clear if minimum sightlines could be achieved, particularly to the west. It was stated that the applicants were not born or raised in the rural area concerned and it was noted that they have rented nearby for 9 years. It was considered that the applicants' business was not "location-bound". A refusal of permission for three reasons was recommended.

### 3.2.2. Other Technical Reports

The Kerry National Roads Office Engineer stated there were no observations to make on the proposal.

The Roads Section considered the proposal would constitute a traffic hazard and set out the requirements relating to setback and relocation of existing poles east and west of the site.

The Site Assessment Unit of the Environment Section reviewed the information submitted relating to the proposed effluent treatment system and had no objection to the grant of permission subject to conditions. It was stated that the SAU did not visit the site.

### 3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

## 4.0 Planning History

### P.A. 19/661

Permission was refused for a house and septic tank system for three reasons relating to adverse visual impact, the lack of rural housing need, and traffic safety impacts.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2015-2021

#### 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.

Table 3.7 of the Plan comprises the amenity zoning settlement policy. It is a requirement within an area designated 'Rural General' that a proposed dwelling is used as a permanent place of residence.

#### Rural Settlement

The site is located within an area designated a "Stronger Rural Area". The Plan objectives relating to this rural area include:

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 activity in urban areas and villages and the wider rural area

## 5.2. **Appropriate Assessment**

The site of the proposed development is located in a rural area remote from the nearest European site, which is the Tralee Bay And Magharees Peninsula, West To Cloghane SAC (Site Code: 002070). It is separated by roads, residential properties, sports grounds, and extensive agricultural lands. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and the separation distance to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 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. The submission of an EIAR is not required.

## 6.0 **The Appeal**

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

The grounds of the appeal may be synthesised as follows:

- The proposed house would be on a site on the verge of Camp village development cluster and surrounded by the existing built environment. It would be no more exposed or visible than recently granted permissions in the area.
- The house design has been stepped to follow the ground contours, thus reducing to a minimum any scarring and it is carefully sited to avoid unnecessary cut and fill. It incorporates extensive boundary landscaping to mitigate visual impact.
- A Design Statement has been prepared and the local authority did not take into account the revised proposal over that previously refused.

- The site is in close proximity to Camp Community Centre which incorporates all the village activities within the complex. In nearby Lispole, houses were permitted to develop in significant numbers in close proximity to the community centre and this helped to sustain the Lispole community. The same approach should be adopted.
- The new home will go some small way to help sustain the community.
- The local authority is failing in the supply of local authority housing in Camp.
- Reference is made to a recently permitted development west of the site and how it was dealt with differently – P.A. Ref. 20/617.
- The appellants are happy to accept any changes to the proposal and feel changes can easily be accommodated through conditions attached to a grant of permission.
- The appellants have made submissions proving beyond any doubt that the family forms an intrinsic part of the community. They are being discriminated against as they are in long-term renting rather than originally from the area. No weight is being given to the length of time they have lived in the community and the contribution they give back. The house they rent is only a short walk from the site. The appellants have no home security. The children are originally from the area and are integrated into the community.
- The proposal is for a family living in the area trying to make a home in the area and the planning authority is not providing suitable zoned land to facilitate people from the area being allowed to remain in the area.
- The proposal has been measured against the Sustainable Rural Housing Guidelines, the Council's Rural House Design Guidelines, and the EPA Code of Practice, as well as the requirement to be used as the primary permanent residence of the applicant. The proposal is totally acceptable when measured against the policies. The application is simply facilitating the people that already live and exist in the area to maintain their presence in the area with more secure housing.
- The proposal complies with development plan requirements relating to Amenity Areas.

- The appellants agree to conditions restricting occupancy and permanent residence.
- The R560 is a straight road alignment. 150m sightlines are available in both directions. The appellants are happy to accept conditions deemed appropriate to improve road safety, including further setbacks or hedge maintenance.

## 6.2. **Planning Authority Response**

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

## 7.0 **Assessment**

### 7.1. Introduction

- 7.1.1. The principal planning issues relating to the proposed development are considered to be rural generated housing need, effluent disposal, traffic impact, and visual impact.

### 7.2. Rural Generated Housing Need

- 7.2.1. The site of the proposed development is located in a rural area outside of the village of Camp in County Kerry. It is located within an area designated a “Stronger Rural Area” in the Kerry County Development Plan. The Plan objectives relating to this rural area include:

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 activity in urban areas and villages and the wider rural area

- 7.2.2. It is clear from the details provided in the planning application and appeal submission that the appellants are not persons who are an intrinsic part of the rural community in which the site is located. While it may reasonably be ascertained that they have Camp village community associations, they are not from the rural community in which the proposed house is intended to be developed and they have no social or economic needs aligned to the rural area in which the site is located. Thus, the appellants do not have a rural generated housing need for a house to be developed outside of the village of Camp.
- 7.2.3. With this understanding it is reasonable to determine that the proposed development would not meet with the requirements of Objective RS-10 of the Development Plan and that such development would be contrary to what Objective RS-11 of the Plan seeks to achieve.
- 7.2.4. Further to the above, it is apparent that, based on the appellants' submission on housing need, this proposal would run contrary to the *Sustainable Rural Housing Guidelines for Planning Authorities*, as the appellants have no genuine 'rural' housing need within an area of the county that is evidently under significant development pressure for one-off housing, given the pattern of housing development in the wider rural area, an area which is easily accessible to county town of Tralee (less than 20km away). The appellants' residential needs could clearly be met within serviced settlements.
- 7.2.5. In addition, I note national planning policy as set out under the *National Planning Framework* published in February, 2018. 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 is clear that the appellants do not have any justification that would merit permitting the development of a house on this site. The National Planning Framework objective of managing the growth of areas that are under urban influence to avoid over-development would essentially be contravened. The proposal would, thus, be in conflict with the National Planning Framework.

### 7.3. Effluent Disposal

- 7.3.1. I note the completed site characterisation form submitted by the applicants as part of the information provided to the planning authority in the planning application. I also note the conclusions drawn in this report and the determination that this site is suitable for a septic tank system with a polishing filter or a packaged wastewater treatment system and polishing filter. I further acknowledge that the planning authority's Site Assessment Unit reviewed the information submitted relating to the proposed effluent treatment system and had no objection to the grant of permission subject to conditions. It is particularly observed that that the representative of the Site Assessment Unit reporting on the effluent treatment proposal did not visit the site.
- 7.3.2. Having inspected this site, I note firstly that the front section of it is prone to ponding and, indeed, at the time of my site inspection there was substantial ponding on this site. This ponding occurs in the area in which it is proposed to locate the effluent treatment unit to serve the proposed house, with a very extensive system of polishing filter trenches intended to be developed. The final effluent that would be generated by this development would be discharged to ground. The vegetation cover most prominent at this front section of the site comprises soft rush. Such vegetation is indicative of poor drainage conditions throughout the year. The soils at this

location evidently have a percolation rate that is very slow and water clearly ponds at this front section of the site. The development of an effluent treatment system at this location poses a distinct pollution hazard. Such a development should not proceed at this location.

- 7.3.3. Finally, I note for the Board that this is not a new issue. The appellants' submission to the Board refers to the "EPA Code of Practice (WWTPs)" and the appellants have submitted that the proposed development is totally acceptable when measured against this, along with a range of other specified guidelines. It is clear that this component of the proposed development is not acceptable from a pollution control perspective.

#### 7.4. Traffic Impact

- 7.4.1. The site of the proposed development would have direct access onto Regional Road No. R560 Tralee-Castlegregory Road at a point where the maximum speed limit of 80kph applies for this road. I note from my site inspection that this is a busy regional road and traffic speeds are high, notwithstanding my inspection occurring at a time when a Level 5 restriction period associated with Covid-19 applied. I also observe that there is a continuous white centreline along the road at this location.
- 7.4.2. I note the third reason for refusal by the planning authority that it was not satisfied that adequate sightlines would be available at the proposed entrance and that the additional traffic generated would likely create a traffic hazard.
- 7.4.3. The proposed access onto this road would be provided on a straight section of the regional road. The site has some 60 metres of road frontage and the land at this location is relatively level with that of the public road. Clearly, the provision of adequate sightlines would be attainable in such circumstances where roadside boundary hedgerow could be removed and a suitably splayed entrance be provided. While I accept that the multiplicity of vehicular entrances onto a public road can undermine the carrying capacity of a public road and can increase the hazard associated with turning movements into and out of individual residential entrances, I

do not consider that there are specific characteristics associated with the proposed entrance location which would warrant any particular traffic hazard concerns.

## 7.5. Visual Impact

- 7.5.1. The site of the proposed development is located in a rural area. It forms part of a field which has hedgerow along its frontage and along its eastern flank boundary and has an earthen bank along its western flank on which there is sporadic vegetation. The land rises in a southerly direction away from the road. There is a backdrop of a hill and hedgerows beyond the site. The site is not in any way prominent when approaching it from the east along the regional road. It is somewhat more exposed when approaching Camp from the west along this road. While it is not elevated ground in relative terms when compared to other more hilly land in the wider environment, what would make a structure such as that proposed notable or distinctive at this location is the undeveloped nature of the agricultural lands at this location. As a result, the proposed development with its large footprint and significant scale would have a distinct visual impact because of the lack of other such development in the immediate vicinity. While one could reasonably conclude that the site could be appropriately landscaped to screen the new structure and that the building could be developed with a specified finished floor level and restrictions placed on the extent of cut and fill permissible, what would be of particular concern would be the consequences of allowing such development in this rural area outside of the village of Camp and the precedent it would set for further development to proceed along this important approach road, which heretofore has not been greatly undermined by a disorderly pattern of ribbon and other sporadic housing development. With the appellants having no rural generated housing need, this is not a precedent that one would desire to be established at this time.

## 8.0 **Recommendation**

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

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within a Stronger Rural Area as designated in the Kerry County Development Plan 2015-2021 and to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and the National Policy Objectives of the *National Planning Framework*, which seek to 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 the applicants do not come within the scope of the housing need criteria as set out in the Kerry County Development Plan and the Sustainable Rural Housing Guidelines for a house at this rural location and do not comply with National Policy Objectives. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, thus, be contrary to the provisions of the Kerry County Development Plan, the *Sustainable Rural Housing Guidelines for Planning Authorities*, and the rural policy provisions of the *National Planning Framework*, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the propensity to ponding on this site and to the predominant soft rush vegetation in the location proposed for the siting of the effluent treatment system, which is indicative of poor soil drainage characteristics throughout the year, it is considered that the proposed development would be prejudicial to public health, notwithstanding any proposal to provide a proprietary effluent treatment system.

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Kevin Moore

Senior Planning Inspector

24<sup>th</sup> February, 2021