



An
Bord
Pleanála

Inspector's Report ABP 309182-21

Development	House, waste water treatment system and associated works.
Location	Knockataggle More, Kilcummin, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/621
Applicants	Darragh and Ciara Kelly
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	William Horgan
Observer(s)	None
Date of Site Inspection	29/03/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.272 hectares, is within the townland of Knockataggle More c. 600 metres to the north of Kilcummin village and c. 5km to the north of Killarney. It is accessed via a narrow cul-de-sac lane which slopes up from its junction with the local road. It currently serves 5 dwellings, two which appear to be of relatively recent construction and served by a shared driveway to the south-west of the appeal site.

The site comprises of the elevated section of a larger field which slopes down westwards to an agricultural access and the family dwelling to the west. The eastern and roadside boundaries are delineated by hedgerows.

One off housing is prevalent in the area, notably along the local roads to the west and north.

2.0 Proposed Development

The application was lodged with the planning authority on the 14/07/20 with further plans and details submitted 18/11/20 following a request for further information dated 03/09/20. Copies of revised public notices were received 30/11/20.

As amended the proposal is for a part two storey dwelling with a stated floor area of 270 sq.m. and a detached garage.

The dwelling is to be served by a wastewater treatment system and sand polishing filter, to be located to the north-west where the slope is not greater than 1:8 (12%).

The site characterisation form accompanying the application recorded a depth from ground surface to bedrock of 0.80 metres. A T-value of 8.08 and P-value of 11.92 were calculated.

Water supply is to be via a private well.

There is a right of way to access the site.

The applicant is the landowner's son. He is the County Vet. He assists his father with the farm.

3.0 **Planning Authority Decision**

3.1. **Decision**

Grant permission for the above described development subject to 19 conditions. Of note:

Condition 9: Occupancy clause.

Condition 10: Dwelling to be used as a primary permanent residence and not used as holiday home or 2nd home.

Condition 13: Surface water to be collected and diverted to discharge to existing watercourse or to a soak pit within the site.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The 1st Planner's report notes that no section drawing has been provided to assess how the dwelling will be integrated into the sloping site. The issue of right of way raised in the objection noted. The applicant meets the criteria set out in the rural settlement policy. A request for further information recommended.

The 2nd report following further information notes that the finished floor levels of the dwelling have been reduced. Sight poles erected on the site showed that it would not be visually obtrusive. The planning authority does not adjudicate on legal matters. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Site Assessment Unit, Environment Section has no objection subject to conditions.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

Objections received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeal summarised below.

4.0 **Planning History**

I am not aware of any previous planning applications on the site.

5.0 **Policy Context**

5.1. **National Planning Framework**

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.

Policy Objective 19: 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, 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;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Development Plan

Kerry County Development Plan 2015

RS-1 ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG) and the Development Guidance document of this plan.

RS-2 require the design of rural housing to have regard to the 'Building a House in Rural Kerry: Design Guidelines' (KCC 2009).

RS-4 ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.

RS-5 ensure that future housing in all rural areas complies with the EPA's 2009 Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses.

RS-6 ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

The site is located within an area designated as a Rural Area under Strong Urban Influence.

RS-7 – ensure that favourable consideration is given to individual one off house developments for immediate family members (sons, daughters or favoured niece/nephew) on family farms and land holdings subject to compliance with normal planning criteria and environmental protection considerations.

The site is within an area designated Rural General. This is considered to be the least sensitive landscape and from a visual impact point of view has the ability to absorb a moderate amount of development without significantly altering their character.

5.3. Natural Heritage Designations

Deenagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC is c. 1km to the south of the appeal site.

5.4. Environmental Impact Assessment

Having regard to the nature and extent of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd Party appeal, which is accompanied by supporting detail, can be summarised as follows:

- The appellant is the registered owner of the access laneway which the applicants propose to use to access the dwelling. The applicants do not have any access to or a right to use the laneway beyond the existing entrance to their farmlands.
- The lane is very narrow.
- The dwelling with a height of 8.275 metres, is to be located on an elevated site.
- There are limited sight lines onto the lane. Coupled with the steep gradient of the driveway, boundary ditch height and proximity to a bend on the laneway, access/egress will be unsafe.
- No details on surface water runoff provided. In terms of the condition attached to the permission there are no watercourses along the roadway, and ground conditions may not allow adequate drainage facilities.
- There is a risk of flooding of the laneway.
- There are more appropriate, alternative locations within the family's landholding.
- There is a spring on the site. The applicant has a right of way to this.

6.2. **Applicant Response**

None

6.3. **Planning Authority Response**

No further comment

6.4. **Observations**

None

7.0 **Assessment**

At the outset I note that the proposal subject of the appeal is before the Board for its consideration de novo. I submit that the issues arising in the case can be assessed under the following headings:

- Compliance with Settlement Location Policy
- Siting and Visual Impact
- Access and Traffic
- Site Servicing
- Appropriate Assessment - Screening

7.1. **Compliance with Settlement Location Policy**

The site is within a rural area identified as being under strong urban influence in the current County Development Plan. In view of the site's proximity to Killarney and its obvious attractiveness for urban generated housing demand this designation is considered to be entirely reasonable. As noted on day of inspection the general area of the site, notably along the local roads to the west and south-east, is characterised by material levels of one off housing ribboning out from Kilcummin village.

I note that the said development plan has due regard to the Rural Housing Guidelines of 2005 with objective RS-1 requiring that future housing in all rural areas comply with the provisions therein.

The National Planning Framework post-dates the said development plan and addresses rural housing. Of particular note 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 whilst sustaining vibrant rural communities. In addition National Policy Objective 19 seeks to facilitate the provision of single housing in the countryside in areas under urban influence based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the siting and design criteria for rural housing in statutory guidelines and plans and to the viability of smaller towns and rural settlements.

The current development plan allows for a presumption in favour of immediate family members (sons, daughters or favoured niece/nephew) seeking permission for a dwelling on family farms and land holdings in such designated areas.

Notwithstanding, in view of the pattern of development in the area to date and the above national policy provisions, I submit that a high bar must be set in terms of demonstrating an applicant's need to have a house at this location based on genuine economic and/or social need so as to ensure the responsible management of the land resource in an area under pressure from one off housing.

I note from the details accompanying the application that one of the applicants is the landowner's son. The site forms part of a farm holding. He is employed as a vet by Kerry County Council and states that he helps his father on the farm. Whilst the applicant may meet the settlement location policy of the current development plan he does not appear to have a need to reside at this location on the basis of an economic or social imperative. I note that the other applicant is a teacher in Tralee.

On the basis of the information on the file it cannot reasonably be concluded that there can be any entitlement bestowed on the applicants for a house on this site based on such economic or social need. I therefore recommend a refusal of permission on this basis.

I consider that this constitutes a new issue. The Board may wish to seek the views of the parties to the appeal.

7.2. Siting and Visual Impact

The site, whilst not within an area designated as being of scenic amenity in the current county development plan, has an innate quality and has visual merit in its

own right. As per the County Development Plan the site is within an area classified as Rural General which is considered to be the least sensitive landscape, and which has the ability to absorb a moderate amount of development without significantly altering its character.

The site subject of the application comprises an elevated location within the applicant's father's landholding. I note that the said holding has less elevated lands with frontage from the cul-de-sac to the west of the family home, with further frontage onto the local road further west although the ground conditions were noted to be wet along same. As to why the subject site was chosen over other locations within the landholding is not entirely clear.

The Kerry Rural Design Guide: Building a House in Rural Kerry, to which regard must be had as per objective RS-2, places an emphasis on the importance of design within the landscape and of siting of development to minimise visual intrusion. These principles are reiterated in section 12.3.1 of the development plan which states that it is important that development in such areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Views of the site are largely restricted save from the local road to the west. From same the dwelling would avail of the screening afforded by existing mature trees to the south and the existing family dwelling which would be in the foreground. I would also submit that in the context of the existing residential development in the immediate vicinity with specific note of the two dwellings of apparent recent construction to the south-west of the appeal site which are visually prominent, the proposal would not be visually obtrusive and would not adversely impact on the visual amenities of the area.

7.3. Access and Traffic

The site is accessed by a narrow access road which terminates at the appellant's property c. 150 metres from the proposed access. The appellant contends that the applicant does not have right of way across the section of road where the access is proposed and that right of way terminates at the access to the applicant's family holding. This was refuted by way of further information with details provided to support the view that the applicant has right of way.

I submit that the applicant has provided sufficient detail to support his assertion so as to make the application. Any further contention constitutes a civil matter to be addressed through the appropriate legal channels. Should the Board be disposed to a favourable decision the applicant should be advised of section 34 (12) of the Planning and Development Act, 2000, as amended, in that a person is not entitled solely by reason of a permission to carry out any development.

As noted on day of inspection the access road is narrow and lightly trafficked. I consider that the access is acceptable and that the vehicular movements arising from the proposed development would not give rise to a traffic hazard.

7.4. Site Servicing

The site is to be served by a wastewater treatment system with sand polishing filter proposed to be located to the north-west where the slope is not greater than 1:8 (12%). The site characterisation form accompanying the application recorded a depth from ground surface to bedrock of 0.80 metres. A T-value of 8.08 and P-value of 11.92 were calculated. The proposed solution is considered acceptable

Water supply is to be from a private well. Access to a spring is raised in the appeal submission. This was acknowledged in the further information submitted. As with the access arrangements this is a matter for resolution between the parties and is not a matter for comment or adjudication by the Board.

The disposal of surface water within the site boundaries and prevention of flow onto the cul-de-sac lane can be addressed by way of soakaways on the site and can be appropriately conditioned.

7.5. Appropriate Assessment – Screening

Deenagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC is c. 1km to the south of the appeal site.

Having regard to the nature and scale of the proposed development and the distance from the said designated site no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the site within an Area Under Strong Urban Influence as designated in the current Kerry County Development Plan 2015 – 2021 and having regard to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and National Policy Objective 19 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, the Board is not satisfied that the applicants come within the scope of the housing need criteria as set out in the Rural Housing Guidelines for a house at this rural location or comply with National Policy Objective 19. The proposed development, in the absence of a demonstrable economic or social 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 Sustainable Rural Housing Guidelines for Planning Authorities and rural policy provisions of the National Planning Framework, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

April, 2021