



An  
Bord  
Pleanála

## Inspector's Report ABP.309604-21

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<b>Development</b>	Construction of a dwelling house, private garage, wastewater treatment system and polishing filter
<b>Location</b>	Gortanahaneboy, Headford, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/1189
<b>Applicant(s)</b>	Caitriona Reen
<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>	Caitriona Reen
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> June 2021
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.1. The site is located in the townland of Gortanahaneboy, near Headford approx. 15km to the east of Killarney. It is located off the N72 Killarney to Mallow Road between Barraduff and Rathmore. It is a rural area which is predominantly in agricultural use but there are a number of single houses and farmhouses scattered around the countryside in the vicinity. The site is accessed by means of a local road which travels southwards from the N72 beyond a farmyard and terminates just beyond the site, approx. 600m from the N72. There is a row of four existing dwelling houses to the north of the farmyard, one of which is under construction. Two of the houses lie to the north and two to the south of the appeal site. The row of dwelling houses is on a slope between the 160 and 170m contours which overlook the valley of the Beheenagh River to the west and south-west.
- 1.1.2. The site area is given as 0.515ha. However, the Board should note that this is incorrect as the site area is just 0.21ha. It comprises an open field and is roughly rectangular in shape which lies between two dormer bungalows on similar sized and shaped sites. It is in an elevated position overlooking the agricultural lands to the south and west. The site is laid in grass and slopes from east to west, falling away from the road. There are hedgerows on the western and southern boundaries, but otherwise the site is not screened. The submissions on the file indicate that the sites on either side are in the ownership of family members.

## **2.0 Proposed Development**

- 2.1.1. It is proposed to erect a two-storey dwelling which would be set back approx. 27m from the roadside boundary, together with a detached garage in the north-eastern corner. The floor area of the proposed house is given as 194m<sup>2</sup> and the ridge height as 6.9m, and the garage would be 54m<sup>2</sup>.
- 2.1.2. The site layout plan shows a proposed wastewater treatment plant located to the rear of the proposed house with a percolation area and polishing filter. Soakaways are proposed to the east of the proposed dwelling. It is proposed to connect to the local water supply. Landscaping proposals include the planting of hedgerows on each of the boundaries surrounding the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for two reasons as follows:

1. The development would contravene materially condition No. 1 attached to the grant of outline permission for the development on the site under Planning Permission Reference Number 01/2176 which states that "Outline permission is being granted for two (2) number dwellings only over the entire site area marked A, B and C". The proposed development would result in a third dwelling on the said site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development of a dwelling at this location would constitute excessive density of development by virtue of its visual impact on the landscape and would interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the County Development Plan 2015-2021. 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 Area Planner noted that the site had originally formed part of an outline permission in 2001 (Ref. 01/2176), whereby three houses were proposed but permission was granted for just two houses with septic tanks and percolation areas, on the basis of excessive density. Approval consequent was granted for the construction of two dormer bungalows (04/2139), but they were not constructed in accordance with the approved plans. Permission was later granted in respect of these dwellings for retention of revised boundaries, (12/135 and 19/886).

Subsequently, permission was refused twice for the erection of a house on the site (09/674 and 20/64). The outcome of this planning history was that the developer had created a gap site by erecting the dwelling houses at the extremities of the sites.

Effectively this means that the applicant is seeking to construct a third house on the site, contrary to the outline permission. The P.A. continues to have concerns

regarding the excessive density at this location and the cumulative impact on the landscape given that there are no 9 no. houses completed.

The Planner's Report noted the location of the site in a **Stronger Rural Area** and in an area designated as **Rural General**. Although the applicant has stated that she was born and raised in the local area with her family home being on the adjacent site, and that the house would be her permanent place of residence, it was considered that the applicant's housing need could have been addressed under 01/2176 and 04/2139. However, it was noted that the site to the south appears to have been sold to a man with an address in Macroom, Co. Cork.

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.

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

**Environment** – The Site Assessment Unit considered that the proposal to provide a proprietary treatment system and final polishing filter was acceptable. No objection subject to conditions.

**Archaeology** – No mitigation required.

### 3.3. **Prescribed Bodies**

**Irish Water** – No objection. It was noted that the applicant proposes to connect to public mains.

### 3.4. **Third Party Observations**

None received. However, a submission in support of the application was submitted by Danny Healy Rae T.D.

## 4.0 Planning History

**Reg. Ref. 01/2176** – Outline permission granted for two houses only with septic tanks and percolation areas. Three houses had been proposed. Reason for omitting one house was based on excessive density.

**Reg. Ref. 04/2139** – Approval consequent granted for construction of two dormer dwellings with individual septic tanks and percolation areas. Implementation of approval resulted in houses being built at extremities of site, contrary to permission.

**Reg. Ref. 09/674** – permission refused on appeal site (Caitriona Reen) for erection of a house with mechanical aeration unit and soil polishing filter on grounds of excessive density.

**Reg. Ref. 12/132** – permission granted to retain dwelling on revised site boundary on site to immediate south.

**Reg. Ref. 12/135** – permission granted to retain dwelling house on revised site boundaries on adjacent site to north.

**Reg. Ref. 19/886** – permission granted to retain dwelling house and garage within revised site boundaries on adjacent site.

**Reg. Ref. 20/64** – Permission refused on appeal site (Caitriona Reen) to construct a new dwelling and domestic garage served by mechanical aeration unit and polishing filter. Details are on the file. This application is very similar to the current proposal before the Board.

## 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 **Rural General Area**, which are described as constituting the least sensitive landscapes which can accommodate a moderate amount of development, without significantly altering its character. 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 RGAs. These include a requirement for dwellings to be integrated into the landscape. Policy objectives ZL-1 and ZL-4 apply which seek to protect the landscape of the County as a major economic asset and invaluable amenity and to regulate residential development in Rural Areas in accordance with zoned designations and the Settlement Policy set out in Section 3.3

#### **5.4. Killarney Municipal District Local Area Plan 2018-2024**

The site is located within the environs of Killarney. It is stated at 3.1.2 that Killarney Environs are under intense pressure from urban generated housing and that sufficient lands have been zoned in the County Development Plan and the LAP for residential use within the town boundary to cater for the existing and future residential needs of the population of Killarney. At 2.3.2 it is stated that the primary focus of development will be in the rural towns and villages which have faced considerable challenges in sustaining growth and vibrancy. Designated settlement where lands are zoned for housing in the vicinity include Rathmore, Baraduff and Scartaglin.

#### **5.5. Natural Heritage Designations**

The site is located within 10km of two European sites, as follows

- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) – c.800m from site.
- Killarney SPA (Site Code 000335) - c.10km from site.

## **6.0 The Appeal**

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

The first party appeal is against the decision to refuse permission. The main points raised may be summarised as follows:

#### **1. Rural settlement policy**

- The policy for the area, including the NPF (Obj. 15), the Sustainable Rural Housing Guidelines and the CDP policies for a Stronger Rural Area, requires that a balance be struck between development activity in urban areas and the wider rural area in order to sustain and consolidate the stability of population. NPF 15 supports the development of rural housing in areas that have experienced low population growth and by managing the growth in areas that are under strong urban influence. As the site is in a Stronger Rural Area, rural housing should be encouraged at this location.
- The applicant has strong rural links with the community, as she was born there and is currently living on an adjoining site with her parents. This site is the only one available to address her housing need. Thus, she is an intrinsic part of the community and has a rural generated housing need to live at this location.
- The proposal would contribute to sustaining and renewing the established rural community and in the preservation of rural assets, local services and infrastructure by facilitating someone from the community to live here. It would not therefore generate an urban housing need.

#### **2. Visual Amenity**

- The site is located in Rural General which is the least sensitive landscape. The proposed development would represent infill development amongst an existing grouping of 9 dwellings and would hardly result in undue visual impact or in interference with the character of the landscape.
- The design and scale of the dwelling is in keeping with the existing houses along the cul-de-sac. The proposed dwelling has been carefully positioned to integrate with its physical surroundings, would be set back from the local road



and would avoid damage to the natural heritage of the area. It would therefore be absorbed and integrated into the landscape and would not seriously injure the visual amenities of the area. It would therefore be in accordance with CDP Objectives ZL-1 and ZL-4.

- The proposal would not constitute an excessive density of development in the rural landscape. Similar proposals have been granted in the vicinity in the recent past without concerns regarding excessive density.
- It is accepted that the proposed development will introduce some localised change by reason of adjustment of levels to accommodate the platform for the house and the introduction of an access drive and gateway, and alteration of roadside boundary to achieve sightlines. However, this would have a very low impact and would involve modest cut and fill. The only long-distance views of the site are from the west, but it will read as a part of a cluster and additional tree planting can be introduced if required. Screening will also be provided by the existing tree bank to the south, the roadside hedgerows and rise in levels to the east and existing dwelling to the north. Thus, there would be no significant landscape or visual impacts arising from the proposed development.

## **6.2. Planning Authority Response**

A response was submitted from the planning authority on 18<sup>th</sup> March 2021.

The response is mainly in the form of a rebuttal and reiterates the points made in the reasons for refusal and planning reports as summarised above.

## **7.0 Assessment**

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

- Compliance with Permission 01/2176 and 04/2139 governing the site
- Rural settlement policy
- Visual amenity
- Environmental impact assessment

- Appropriate assessment

## **7.2. Compliance with Permissions 01/2176 and 04/2139**

7.2.1. The original outline permission for the larger site of which the appeal site forms a part (01/2176) was granted subject to a condition (No. 1) which reads as follows:

1. Outline permission is being granted for two (2) number dwellings only over the entire site area marked A, B and C.

The Approval consequent (04/2139) was granted for the construction of two dwellings subject to a condition (No. 2) which reads as follows:

2. The Development shall be carried out entirely in accordance with the plans and particulars submitted to the planning authority on the 27/05/2004 and revised on 31/08/2004 except for any alterations or modifications specified in this decision.

The dwelling houses shall be located on site as shown on the site layout map, Scale 1:500 lodged with the planning authority on 27/05/2004 and revised on 31/08/2004.

Only one dwelling unit shall be erected on each of the two sites as shown outlined in red on the site location map, Scale 1:2500 lodged with the planning authority on 27/05/2004 and revised on 31/08/2004.

No part of the proposed dwelling houses, garages or any other structures shall be erected closer than 4.5m from the centre of any divisional boundary or adjoining property on either side of the proposed dwelling house.

Reason: To regulate and control the layout of the development.

7.2.2. It is clear from the conditions attached to the parent permission/approval for the site that the permitted development was specifically for two houses only. The planning reports relating to these, and subsequent planning applications made it clear that the cul-de-sac had been under considerable pressure for one-off houses and that the planning authority considered that the density of development would be too high should permission be granted for the three houses on the site as proposed (01/2176). Notwithstanding previous attempts to revert to the original intention to construct three houses on the original site, the planning authority has consistently

remained of the view that the density of housing at this location is too high and that no more than two houses should be constructed on the site.

- 7.2.3. In light of the foregoing, I would agree with the planning authority's first reason for refusal that the proposed development would materially contravene Condition 1 of Outline Permission 01/2176 and that it would result in a third dwelling on the site. However, it is further considered that the proposed development would also materially contravene Condition 2 of 04/2139 which specifically stipulates that only one dwelling be constructed on each of the two sites. It is considered, therefore, that planning permission for the erection of a further dwelling house on the site created in between the two permitted dwellings should be refused on these grounds.

### **7.3. Rural settlement policy**

- 7.3.1. 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.
- 7.3.2. 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.
- 7.3.3. The Killarney Municipal District LAP (2.3.2) states that Killarney has an extensive commuter zone with the most defined one extending eastwards from the town towards Rathmore. It is further stated in the LAP that towns and villages in the area

have faced considerable difficulties in recent years to retain vibrancy and vitality in the face of a number of challenges, and that building a critical population mass in such settlements is a key objective of the LAP to ensure their long-term stability.

- 7.3.4. The site is located in a rural area which is primarily an agricultural area but seems to have been under sustained pressure in recent years for one-off housing. There are currently nine dwelling houses along this cul-de-sac with a line of four or five houses in a row. The proposed development would insert a further house into this row. Although it is located 15km from Killarney and is in an area designated as Stronger Rural Area, it would appear to be in a small pocket which is more akin to one that is experiencing intense pressure for urban generated housing. The density of housing along this cul-de-sac indicates that this is not an area that is in need of sustaining the rural population.
- 7.3.5. The submissions in relation to the application and appeal set out the applicants' circumstances. The applicant is the daughter of the landowner who originally obtained outline permission for the two dwellings, and who still owns and resides in the dwelling to the immediate north. The applicant, it is stated, lives with her parents here. However, the second dwelling was previously sold to a third party from Macroom. The applicant is employed in a hair salon in Killarney town, which is stated in the supplemental form as being 19km from the site. I would accept that the applicant is intrinsic to the local area but would not accept that the applicant has a rural generated housing need to live at this location. Her place of employment is in an urban area and there are many urban settlements in the area, such as Barraduff and Rathmore, where lands are zoned for housing.
- 7.3.6. I would also share the view of the planning authority that any housing need should have been addressed in the outline and approval consequent permissions. The planning history of the site and the adjoining sites indicate that there have been attempts to circumvent, by stealth, the original decision of the planning authority to restrict development on the parent site to two dwelling houses. These steps included the revision of the site boundaries to exclude the house to the south, the sale of the dwelling house to the south, the revision of the site boundaries to effectively create an infill site, and a previous application to erect a third dwelling house on the site between the two houses. Thus, any housing need by the applicant could have been addressed prior to the sale of the second house on the lands.

7.3.7. Whilst the applicant may meet the criteria regarding being an intrinsic part of the community, there does not appear to be any 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.

#### **7.4. Visual amenity**

7.4.1. The Rural General Amenity Area is one that is the least sensitive landscapes, which has the ability to absorb a moderate amount of development without significantly altering its character. However, the zoning objective ZL-1 seeks to protect the landscape of the County as a major economic asset and as an invaluable amenity which contributes to the quality of people's lives. Objectives RS-2 and RS-4 require that new houses be designed in accordance with the Kerry Rural Design Guide: Building a House in Rural Kerry and it will protect the landscape. The proposed development should, therefore, be capable of being successfully integrated into the landscape and should not be unduly obtrusive in its siting and design.

7.4.2. The site is located in an elevated position overlooking the Beheenagh River valley. The existing row of houses is prominently visible from the surrounding countryside. It is considered that the introduction of an additional house in the middle of the row would result in a suburban form of development in this rural area which would detract from the rural character of the landscape. It is considered, therefore, that the proposed development would not be in accordance with the guidance in the Kerry Rural Design Guide: Building a House in Rural Kerry and with Objective ZL-1 of the Development Plan which seeks to protect the landscape in Rural General Amenity Areas. I would agree with the P.A., therefore, that the proposed development would constitute a highly visible and obtrusive feature in the landscape and would not be

acceptable in terms of the visual amenities of the area. It would not be capable of being readily integrated into the landscape and should therefore be refused.

## **7.5. Environmental Impact Assessment**

- 7.5.1. The proposed development is for the construction of a single dwelling house, garage and wastewater treatment system, which will involve tertiary treatment of wastewater, on a greenfield site. The proposed development is not located adjacent to or hydrologically connected to any environmentally sensitive sites. 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.

## **7.6. Appropriate Assessment**

- 7.6.1. The closest European site is Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) –which is located approximately 800m from site. Given the small scale and nature of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment can be ruled out at this stage.

## **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 proposed development would contravene materially a condition attached to an existing permission for development namely, condition number 1 attached to outline permission granted by the planning authority on the 21<sup>st</sup> day of December 2001 under planning register reference number 01/2176 and condition number 2 attached to the approval consequent granted on the 30<sup>th</sup> day of November 2004 under planning register reference number 04/2139.

2. 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 Killarney Municipal District 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.
3. The site of the proposed development is located within an area designated as Rural General in the Kerry County Development Plan 2015-2021, where the zoning objective ZL-1 is to protect the landscape of the County as a major economic asset and as an invaluable amenity which contributes to the quality of people's lives and wherein it is required that development integrates into the landscape and is sited to minimise visual intrusion, as set out in Objectives RS-2 and RS-4 and in the current Building a House in Rural Kerry – Design Guidelines. These guidelines and objectives are considered reasonable. Having regard to the pattern and density of existing housing development in the vicinity of the site, which comprises a row of individual houses in an elevated and exposed location, it is considered that the proposed development, by reason of the consolidation and expansion of this

ribbon of development, would be visually obtrusive, would fail to integrate and be absorbed into the landscape and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the development plan objectives for the area and the proper planning and sustainable development of the area.

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Mary Kennelly  
Senior Planning Inspector

20<sup>th</sup> June 2021