



Development	Construct a new dwelling house, detached garage, connection to a mechanical treatment unit, polishing filter and all associated site works.
Location	Cools, Headford, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2169
Applicant(s)	Brendan Stack and Brigette Sheehan.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Type of Appeals	Third Party
Appellant(s)	Myriam Dennehy Cormac Casey Tara Duggan
Observer(s)	None.
Date of Site Inspection	13 th August 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a greenfield site located to the southwest of the Village of Headford approximately 15km to the south-east of Killarney in County Kerry. The area while rural in character is characterised by extensive one-off housing development. The appeal site abuts a local road to circa 60m to the south of Headford Junction now marked by an automated level rail crossing. The immediate area is of historical significance as Headford Junction was the location of the Headford Ambush carried out by the Irish Republican Army on 21st March 1921 during the war of Independence. A monument to commemorate the event is located circa 60m to the southeast of the appeal site fronting onto the Regional Road 570.
- 1.2. The appeal site which has a stated area of 0.19hectares (measured to the centre line of the public road frontage) is enclosed by mature hedgerows and trees with ESB line crossing over the southern portion of the site. The site is elevated over road level rising generally to the northwest. There are a number of well-established buildings in the vicinity including the former Station Master's House to the northwest.

2.0 Proposed Development

- 2.1. The application is for permission for construction of a new dwelling house, detached garage, connection to a mechanical treatment unit, polishing filter and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

By order dated 19th May 2021 Kerry County Council issued notification of its decision to grant permission and 20 conditions were attached which included the following of particular note.

Condition 2. Development contribution €2,980.00 in accordance with the Kerry County Council Development Contribution Scheme.

Condition 9. First occupancy subject to Section 47 Agreement.

Condition 11. The existing roadside boundary fence shall be removed and front boundary fence set back 2.4m from the road edge to achieve sightlines.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report deems the house design to be well considered. Ambush monument is distant from the site and proposal will not impact on historical significance. Applicant complies with rural housing policy. Further information required in relation to sightlines, landscaping and surface water drainage.

Final report indicates no objection subject to conditions.

3.2.2. Other Technical Reports

Environment Section. No objection to a grant of permission subject to conditions.

Executive Engineer, Operations Department. No objection subject to conditions including front boundary to be set back 2.4m from the edge of the road to achieve sightlines.

3.3. Prescribed Bodies

Irish Water submission indicates no objection subject to connection agreement and adherence to relevant standards and codes of practice.

3.4. Third Party Observations

3.4.1 Submissions from Myriam Dennehy owner of the 19th century station master's house on the adjoining site. Submission outlines concerns regarding retention of boundary trees predominantly fir and rhododendron. Proximity of wastewater treatment system and garage raises issues with regard to potential root damage. Site size less than the required 0.2hectares of particular concern given questionable suitability for wastewater treatment. Dwelling design not sympathetic to the character of historic structures.

- 3.4.2 Cormac Casey. Station House, Cools. Concern regarding impact on heritage, inadequate site size. Site is waterlogged for much of the year and there is a natural spring 60m east of the site and extensive elevated bog/wetland area and forestry to the north. Irish Rail had to suspend service on the rail line recently due to flooding and works are currently underway to address this issue. Accuracy of site suitability is questioned. Question local connection / local need. Overlooking and loss of privacy.
- 3.4.3 Seán Doherty, Cluain Dara, Knockanes, Headford the adjoining landowner to the south and southwest of the site. Sod and stone ditch and hedgerow currently provides shelter and fencing for livestock and any landscaping should be entirely within the appeal site boundary.
- 3.4.4 Submission by Leahy Planning Ltd on behalf of Tara Duggan, Tomies Beaufort who has recently acquired a small cottage opposite the site. Submission claims argues that the proposal does not comply with rural housing policy. Discrepancies on planning application drawings are noted. Scale of house is excessive and site characterisation report does not take cognisance of the entire capacity of the house. Alternative option to renovate cottage in the locality should be pursued. Application area indicates site 0.19 ha however filed plan in respect of the folio indicates site area 0.18ha. No letter of consent is given for the lands outside the folio and not owned by the applicant.
- 3.4.5 Representation by Danny Healy Rae TD. - Outlines strong support for the application. Applicant's mother's home is not even 2km away. The site belonged to her grandmother.¹

4.0 Planning History

No planning history on the appeal site.

¹ I note apparent inaccuracies in this representation. The applicant in submissions to the local authority indicates that her mother's home is at Kilquane approximately 5km from the site. The applicant's paternal grandmother apparently moved from the area before the applicant was born. The applicants have contracted to purchase the site from a third party and there is no reference to any historical family ownership of the site.

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. ABP.309604-21 Inspector's Report Page 6 of 16 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. 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.

5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers. The site is within an area designated as Rural General In terms of settlement policy the site is within an area designated as Stronger Rural Areas 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.

Rural Housing It is an objective of the Council to:-

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-3 Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within existing cluster developments.

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 area complies with the EPA’s 2009 Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e < 10). 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.

Specifically in relation to Stronger Rural Areas the following objectives apply:

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.

At 13.4 Residential Development in Rural and Non-Serviced Sites.

Site Curtilage. The site curtilage required to accommodate dwellings should reflect the size and scale of the proposed development bearing in mind its integration into the landscape, its proximity to public roads and adjoining dwellings as well as the standard environmental requirements and shall be a minimum of 0.2 hectares.

In the case of the following:

- renovation of existing dwellings,

- where the renovation of a dwelling requires the retention within revised site boundaries of an adjacent dwelling, the retention of this dwelling,
- an infill site,

site areas which fall below this threshold will be considered, where the applicant can satisfactorily demonstrate that adequate provision can be made for the disposal of effluent and the other provisions of the Plan with regard to development.

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 Glenflesk.

5.2. **Natural Heritage Designations**

The site is not within a designated area. The nearest such site is the Killarney National Park Macgillycuddy's Reeks and Caragh River Catchment SAC Site Code 000365 which occurs within 400m to the east of the site.

The Blackwater River Cork Waterford SAC occur within 8.6km to the east.

The Killarney National Park SPA occurs within 8.6km to the west.

5.3. **EIA Screening**

- 5.3.1. Having regard to the nature, size and location of the proposed development and the sensitivities of the site location, there is no real likelihood of significant effects on the environment and on preliminary examination an environmental impact assessment report for the proposed development is not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 There are three third party appeals by the following third parties

- Myriam Dennehy, Station House Headford.
- Reeks Consulting Engineers on behalf of Cormac Casey. Station House Cools Headford.
- Leahy Planning Ltd on behalf of Ms Tara Duggan, Tomies, Beaufort, Killarney Co Kerry

6.1.2 Grounds of appeal raise common and particular issues which in the interest of brevity have summarised as follows:

- Potential for negative impact on mature trees on northern boundary given proximity of wastewater treatment system and garage.
- Potential impact on privacy and liability issues.
- Site area .18ha according to land registry or .19ha according to application is not sufficient when minimum area of 0.2ha as per development plan. Removal of front roadside boundary and setting back hedge 2.4m further reduces site curtilage and also results in adverse impact on rural character.
- As the applicants work in Cork City and Blarney the proposal is urban generated and would contravene national and local objectives and would be contrary to the proper planning and sustainable development of the area.
- Attachment to the area is vague. It is understood that the applicants grandmother was born in the area but lived her married life in Co Cork and has been gone from the area for over 50 years.
- Potential for negative impact on the historic landscape. Proposal would be the first new building in a historical hamlet of houses. Proposed building is not appropriate to its setting.

- Applicants could pursue alternative options for housing in the village of Barraduff or renovation of vacant buildings closer to the applicant's mother's home.
- Water table on the site is approximately 850mm below ground level and site is small. T value is 41 and P value 27. Notable water ponding on the site as well as vegetation indicators including extensive rush growth. Dwellings in the vicinity have all had issues with wastewater treatment systems in recent past particularly with the increase in rain fall. A natural spring 60m west of the site and extensive elevated bog wetland area and forestry which was recently harvested. In August 2020 Irish rail had to suspend services for several hours due to flooding and debris on the line. Irish Rail is currently undertaking works to redirect potential flood water which will change drainage issues in the area.
- Neighbouring dwelling has had extensive flood damage.

6.2. Applicant Response

The first party did not respond to the grounds of appeal.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.0 Assessment

7.1 This appeal can in my view be addressed under the following broad headings:

- Principle of Development - Occupancy Housing Need
- Site size, design and layout and impact on heritage and established residential amenity.
- Wastewater Treatment
- Appropriate Assessment Screening

7.2 Principle of Development Occupancy / Housing Need

7.2.1 National guidance as set out in the National Planning Framework and in the Sustainable Rural Housing Guidelines emphasises 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 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.

7.2.4. The site is located in a rural area which while primarily agricultural is evidently under sustained pressure for one-off housing. The site lies 8km from Killarney 2.3km from Barraduff and 8km from Rathmore. The site is within the “stronger rural area” designation where it is the policy of the Planning Authority RS-10 to “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.” and RS-11 to “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”. The application relies on the case that the applicant Brigitte Sheehan grew up in the townland of Kilquane 5km from the site and attended Barraduff NS. Her grandmother lived prior to marriage opposite the site the application site is being purchased from a third party. The applicant desires to live close to her mother who now lives at Kilquane circa 2.5km from the site.

7.2.5 The two applicants currently work in Blarney and Cork City and therefore the proposal would clearly give rise to a significant commute and it is clearly an urban generated form of development. I consider that based on the submitted details a local housing need has not been demonstrated. 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, the proposal would exacerbate and consolidate the pattern of haphazard rural housing in an unserved area and at the same time, 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 Site size, design and layout and impact on heritage and established residential amenity.

7.3.1 I note the dwelling design is a two-storey structure – a contemporary take on traditional form. The dwelling is a substantial structure extending to 200 sq.m and a garage of 30 sq.m. As regards impact on established residential amenity, given the separation distance to adjacent dwellings and established landscaping cover I consider that no undue negative residential amenity impacts arise. Given the separation distance to established dwellings overlooking and overshadowing does not arise. I note the concerns raised by the third parties with regard to potential loss of boundary trees and hedgerows and I would concur that any such loss would be detrimental to rural amenity.

7.3.2 As regards potential impact on heritage I consider that proximity to the site of the Headford Ambush would not per se preclude potential development. On the matter of site size, I note that the site has a stated area of .19ha however this size incorporates the site frontage to the centreline of the public road. Third party submissions note that the registry folio documents indicate a registered area of 0.18ha. This is clearly well short of the minimum requirement of 0.2 hectares as set out in the Development Plan. I note that the exceptional circumstances provided within the plan for flexibility on this matter relate to renovation projects or infill sites neither of which arise in the current case. I note that the decision of the local authority further reduced the workable area of the site in terms of setting back the full roadside boundary frontage a distance of 2.4m to achieve sightlines which would in

my view be extreme and would clearly be detrimental to rural amenity. On the basis of the inadequate site size, I consider that refusal is warranted.

7.4 Wastewater Treatment

7.4.1 As regards wastewater it is proposed to provide an on-site wastewater treatment system to serve the proposed dwelling. The site characterisation form notes approximately 13 houses within 250m of the site. Within the trial hole excavated to a depth of 2.2m water table was identified at 0.85m. Bedrock was not encountered. Soil is described as silt/clay topsoil to 0.3m leading to firm silt. No smearing or mottling was evident in the trial hole. A T value of 45.11 and P test value of 27.86 was noted. It is proposed to provide a packaged wastewater treatment unit with polishing filter discharging to groundwater.

7.4.2 I note that the third-party appellants raise concerns with regard to the potential for flooding on the site and given the high-water table the potential pollution risk arising in the event of floodwater or groundwater inundation of the wastewater treatment system is a significant issue. Such concerns are further noteworthy in the context of the restricted size of the site. The first party did not address these matters. I consider that the issue of flood and pollution risk has not been resolved and based on the details submitted it cannot be determined that the proposed development would not be prejudicial to public health.

7.5 Appropriate Assessment Screening

7.5.1 On the issue of appropriate assessment and in terms of identification of the European Sites which could potentially be affected, I note that the Killarney National Park Macgillycuddy's Reeks and Caragh Catchment SAC (Site Code 000365) is within 400m to the east. The Blackwater River (Cork Waterford) SAC Site Code 002170 is 8.6km to the east. Given the small scale and nature of the development the distances involved and the absences of any indication of a hydrological link to the European Sites it is considered that Appropriate Assessment can be ruled out.

7.5.2 Having carried out screening for Appropriate assessment of the project it has been concluded that the proposed development individually or in combination with other plans would not be likely to give rise to give rise to significant effects on Killarney National Park Macgillycuddy's Reeks and Caragh Catchment SAC (Site Code 000365) The Blackwater River (Cork Waterford) SAC Site Code 002170 or any European Site in view of the sites conservation objectives and submission of an NIS is not required.

Recommendation

Refuse permission for the following reasons.

Reasons and Considerations

1. The site of the proposed development is located within the area designated "Stronger Rural Area" as designated in the Kerry County Development Plan 2015-2021 and in an area where the urban influence of Killarney is evident. Policy RS10 and 11 of the County Development Plan seeks to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community and to 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. It is national policy, as set out in National Policy Objective 19 of the National Planning Framework, Department of Housing Planning and Local Government 2018, 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, having regard to the viability of smaller towns and rural settlements. It is considered that the applicant has not demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements, and, therefore, the proposed development does not comply with National Policy Objective 19 or Policy RS 10 and RS 11 of the County Development Plan. The proposed

development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the National Planning Framework, and 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. Having regard to the restricted size of the site which does not meet the minimum standard 0.2ha as set out in the Kerry County Development Plan 2015-2021 the Board is not satisfied on the basis of the submissions made in connection with the application and the appeal that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Bríd Maxwell
Planning Inspector

1st September 2021