



An  
Bord  
Pleanála

## Inspector's Report ABP.310415-20

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<b>Development</b>	Renovate and extend existing dwelling house and install mechanical wastewater treatment system and polishing filter
<b>Location</b>	Kilquane, Ballymacelligott, Tralee, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/943
<b>Applicant(s)</b>	John O' Neill & Nicole Moriarty
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant permission s.t. conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jeremiah Locke
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26 <sup>th</sup> October 2021
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.1. The site is located in the townland of Kilquane, approx. 4.5km to the northeast of Tralee town. It is accessed by means of a third-class rural road (I6546) which branches off the N21, Tralee-Castleisland National Primary Road, in a northerly direction. The junction of the local road and the N21 is approx. 400m to the east of the roundabout junction with the link road leading to the N22, Cork Road. 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. Most of the single houses are in clusters or ribbons of development further to the south.
- 1.1.2. The appeal site is situated on the south-eastern side of the local road with approx. 100 metres of frontage to the road, approx. 1.5km north-east of the junction with the N21. There is a farmyard and associated farmhouse located immediately to the north of the site, which is the appellants' property. The local road is narrow and winding with mature, high hedgerows along both sides. It appears to be approx. 3 metres wide for most of its length. There is a further one-off house located to the south-west.
- 1.1.3. The site area is given as 0.52ha. The appeal site contains an existing dwelling house, (stated area 50m<sup>2</sup>) which appears to be in a ruinous and derelict condition. There is a splayed entrance with concrete wing walls and pillars. The roadside boundary is of sod and stone with a mature hedgerow to the south of the entrance and a wire fence to the north. The ground levels fall within the site from east to west. Apart from the cottage, which is located at the northern end, the remainder of the site comprises an agricultural field which is overgrown with rushes. The OSI maps indicate that there is a cave on the site towards the southern end.

## **2.0 Proposed Development**

- 2.1.1. It is proposed to renovate and extend the existing cottage on the site. The floor area of the existing single-storey cottage is given as 50sq.m and the floor area of the proposed single-storey extension as 196sq.m, resulting in a total floor area of 246sq.m. The proposed extension would be to the rear and side of the cottage extending to the east and south. The roof would have gable ends on the northern and southern ends of the extension and the ridge height is given as 4.779m, which matches that of the original cottage. The proposed alterations to the cottage include

the replacement of the original door and windows with more modern windows to match those of the proposed extension.

- 2.1.2. It is proposed to remove the roadside vegetation to provide sightlines of 90 metres in each direction at the entrance. It is proposed to connect to the public water mains. The site layout plan shows a proposed wastewater treatment plant located to the south-west of the proposed house with a percolation area and polishing filter. Landscaping proposals include the retention of hedgerows and tree lines and the planting of additional planting on the boundary adjacent to the appellant's property.
- 2.1.3. Unsolicited further information was submitted to the P.A. on the 1<sup>st</sup> December 2020 and on the 11<sup>th</sup> March 2021. In addition, the planning authority sought further information on the 1<sup>st</sup> December 2020, which was responded to on the 12<sup>th</sup> February 2021, and sought clarification of FI on the 9<sup>th</sup> March 2021. This was responded to on the 14<sup>th</sup> April 2021.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to grant permission subject to 14 no. conditions, the most relevant of which may be summarised as follows:

Condition 2: Development contribution €1,872.00

Condition 3: materials and finishes.

Condition 4: notwithstanding exempted development, no further development without planning permission.

Condition 12: Retain public road boundary except for entrance.

Condition 14: Landscaping.

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

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

The Planner's Report noted the location of the site in an area designated as **Rural General**. The third party objections were noted and taken into consideration.

The Area Planner raised concerns regarding the structural integrity of the cottage, adequacy of sightlines available at the entrance, the geology of the area and whether caves were present on the site and the potential impact of the proposed development in the integrity of underground caves, streams or rivers. The adequacy of the proposed wastewater disposal measures was also questioned.

**Further information** was requested on the **1<sup>st</sup> December 2020** requiring a Structural Engineering Report, Revised Site Layout with adequate sightlines and a Geological Survey of the site addressing the likelihood of the presence of caves and any impact on same. Further information regarding the proposed wastewater treatment system including cross sections and confirmation of the vulnerability rating, were also required.

**Unsolicited FI** was submitted on **1/12/20** which directly addressed matters raised in the third-party objection, but not all of the items raised in the FI request. The **Further Information Response of 12<sup>th</sup> February 2021** included a Structural Engineering Report on the integrity of the cottage, a Geology/Ecology Report, revised drawings/additional details regarding the WWTS and a revised Site Characterisation Form, with the GWPS upgraded to R2<sup>2</sup>. It also included a revised site layout plan with sightlines provided by means of removing the roadside boundary vegetation and lowering the ditch to 1.0m above road level.

The FI response (12<sup>th</sup> February 2021) was considered to be inadequate in respect of demonstrating the structural integrity of the cottage, the presence or otherwise of caves within the site area and the adequacy of the percolation area/polishing filter for the proposed WWTS. The Area Planner sought further **clarification** of these details on **9<sup>th</sup> March 2021**.

**A further information response** was received on **14<sup>th</sup> April 2021** which addressed the outstanding matters to the satisfaction of the Area Planner. A further **unsolicited further information letter** from the applicants was received on **11<sup>th</sup> March 2021** setting out their desire to live in this particular rural area.

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. Permission was recommended subject to conditions.

### 3.2.2. Other Technical Reports

**Environment** – The Site Assessment Unit raised concerns initially regarding the adequacy of the proposed polishing filter in terms of availability of suitable permeable soil. It was further noted that there was an anomaly in terms of the groundwater response. Following the receipt of FI and clarification of FI, it was considered that the proposal to provide a proprietary treatment system and final polishing filter was acceptable. No objection subject to conditions.

**Archaeology** – no recorded monuments on site which has previously been disturbed. No mitigation required.

### 3.3. Prescribed Bodies

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

### 3.4. Third Party Observations

Objections were received from the neighbouring landowner to the north-east. The concerns raised are similar to those raised in the third-party grounds of appeal. In brief, they related to the following matters:

- Grounds of refusal for previous application on site (04/4083) not addressed.
- Geology of area includes a large underground cave/river system under the site which has not been addressed.
- Impact on visual amenity and character of area.
- Impact on residential amenity, overlooking, proximity to dwelling to East.
- Structural integrity of cottage which has never had an electricity or mains connection and has been vacant and overgrown for 18 years.
- Traffic hazard, inadequate sightlines.

## 4.0 Planning History

**Reg. Ref. 04/4083** – decision to **refuse** planning permission for the construction of a dwelling with on the site with a proprietary WWTS on three grounds. Firstly, traffic hazard due to inadequate sightlines on public road, secondly prejudicial to public health as not satisfied that effluent could be adequately treated on site, and thirdly, visual impact due to elevation and high visual impact would be unduly obtrusive in the landscape.

## 5.0 Policy Context

### 5.1. National Planning Framework

**National Policy Objective 15** seeks to manage the growth of areas under strong urban influence to avoid over-development.

**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.

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

- 5.3.1. In terms of Rural Settlement Policy, (3.3), the P.A. reports indicate that the site is located within a **Stronger Rural Area** which is described as one where the population levels are generally stable within a well- developed town and village

structure. Two further objectives relate to Stronger Rural Areas, namely **RS-10** which is to facilitate houses for persons who are an intrinsic part of the rural community in which they were raised and **RS-11** which is to consolidate the stability of the rural population and to balance development in urban areas and the wider rural area.

5.3.2. However, it seems from Map 3.1 of the CDP (and Figure 2 of the Tralee-Killarney Hub Functional Area LAP) that the site may be located in **Rural Area Under Strong Urban Influence** which is described as one which exhibits characteristics such as proximity to the immediate environs or close commuting catchment of the Hub Towns and larger towns, rapidly rising populations, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area and pressures on infrastructure such as the local road network. There are three further objectives which relate specifically to Rural Areas Under Strong Urban Influence, namely, **RS-7** which seeks to provide for housing requirements of immediate family members of farms and landholdings, **RS-8** which seeks to facilitate the provision of dwellings for people who are intrinsic to the area with priority given to occupation of vacant units and completion of unfinished dwellings, and **RS-9** which seeks to facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages.

5.3.3. **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**).

5.3.4. Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Rural General Area**, where settlement policies RS1-4 apply. These areas are described as constituting the least sensitive landscapes which can accommodate a moderate amount of development, without significantly altering its character. This is an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to Rural General

Areas. 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.

- 5.3.5. **Section 3.3.5 Renovation and Restoration of Existing and Vacant Buildings Situated in Rural Areas** -The renovation and restoration of existing structures and the completion of derelict and vacant units in the rural countryside will be given positive consideration where they are for use as permanent residences and as holiday homes. Replacement of such dwellings will also be considered. Relevant policies are **RS-16** and **RS-17**. The properties should be structurally intact and exhibit essential physical characteristics of a dwelling house and the scale of the works should be sympathetic to the character of the original structure.

#### 5.4. **Tralee Killarney Hub Functional Area LAP**

Rural Area types as identified in the Core Strategy of the CDP are described in this LAP. It is stated that the Hub area is generally characterised by both Rural Areas Under Strong Urban Influence and Stronger Rural Areas. The environs and rural areas around Tralee and Killarney are described as being under strong urban influence and the current level and pattern of development in these areas as unsustainable (5.4.1). The cumulative impact of this type of development is described as having the potential to reduce the value of the countryside as a regional asset by damaging the landscape, water quality, biodiversity interests and to create additional and unnecessary problems for the supply of infrastructure and services and to increase car dependency and high energy use.

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

The site is located within 8km of six European sites, as follows

- Ballyseedy Wood SAC (Site code 002112) - c.2.3km to the southwest
- Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) – c.3.1km to the north
- Slieve Mish Mountains SAC (Site code 002185), c.4.9km to southwest



- Lower River Shannon SAC (Site Code 002165) – c.7.1km to northeast
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code 002070) - c.7.3km to west
- Tralee Bay complex SPA (Site code 004188) – c.7.3km to the west

## **6.0 The Appeal**

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

The third-party appeal was submitted by Jeremiah Locke. It was accompanied by a USB which contains a video entitled Caves and River, which was recorded from within the appeal site and existing cottage. Various other documents were also included as either hard copies or soft copies including extracts from the development plan, P.A. decision, history file 04/4083, extracts from planning reports and other submissions made to the P.A. during the course of the application. The main points raised may be summarised as follows:

#### **1. Ecological, Geological, Environmental and Historical factors**

- No cognisance has been taken of the proximity of the proposed dwelling and percolation area to caves on the site or to the presence of a hydrological feature (underground river) on the site. From local knowledge and visual inspection, it is submitted that there is an underground river which flows under the dilapidated cottage and many caves and shakeholes (depression in the limestone) are present in the vicinity. Shakeholes are formed where surface water washes the boulder clay into the cracks and fissures.
- The appellant has grave concerns in relation to the proposed development and the wastewater treatment system which is likely to generate more shakeholes in the area with potentially devastating results. It could lead to the collapse/subsidence of the soil structures and to the road, blocking the underground river, which could cause flooding in the local area.
- These Geological features are of great significance and are Sites of Geological Interest. They are well documented and are listed in Kerry CDP

(Table 10.6) as 'Ballymacelligott Cave System. Policy T-4 and Objective NE-27 seek to preserve such features. Despite being highlighted by the applicant's agent, the P.A. did not adequately pursue the matter, and this was not properly taken into account in deciding to grant permission. The proposed development would contravene these policies.

- It is disputed that the development should not have required an Environmental Impact Assessment for these reasons.

## **2. Inadequate drainage proposals**

- The site is underlain by an underground river and a network of caves and is wholly unsuitable for the proposed wastewater treatment system. The submitted documentation states that bedrock was encountered at 1.65m, and this was probably the roof of a cave. The specification for trial holes is 2.1m deep and is 3.0m for Regionally Important Aquifers, (EPA Code of Practice) which is the case in this instance as evidenced by the GSI database. It should also be noted that bedrock was encountered at 1.5m in the previous application (04/4083).
- The percolation area for the proposed WWTP is well within 10m of the cave structures on site and the underground river passing under the cottage. This breaches the guidelines in the EPA's Code of Practice (2010). The proposal will therefore endanger public health.
- The gravity wastewater treatment system is not adequate for the site as the effluent will have to flow upwards against gravity. The drawings of the proposed extension do not include the FFL. The appellant has estimated (from the details submitted) that the existing FFL is likely to be at 40.110m and the proposed FFL at 40.140m. This means that FFL would lie below the level of the percolation area, (Sections included at page 18 of the grounds of appeal).
- Lowering the polishing filter area would not be possible as the COP requires that the minimum soil thickness beneath invert is 1.2m to bedrock or ground water, which is already achieved. The previous application (04/4083) was refused planning permission on the grounds of inadequate treatment of wastewater, which had included such a raised percolation bed.

### **3. Rural settlement policy**

- The applicant seems to be justifying an entitlement to a grant of permission in Kilquane based on Mr. O'Neill spending some summers with aunts and uncles during his youth in the parish of Ballymacelligott. The appellant is not aware of any family connections by the applicants to persons in the townland of Kilquane. It is submitted that the site would have been purchased without planning permission.
- The structural integrity of the existing dwelling has not been adequately demonstrated. It was not possible to conduct an adequate site survey as the floors are covered in rubble. There is structural cracking in the front elevation. The proposal to use a ring beam of concrete to support the roof but it is doubtful that the wall foundations will support the roof and ring beam. The walls are constructed of a shallow layer of limestone rocks and mortar and river gravel. The foundations will need to be replaced.
- There is no electrical wiring in the dwelling and never has been.

### **4. Visual Amenity**

- The area of the extension is 80% of the overall development and as such, cannot be regarded as an extension. It is a house in its own right. The CDP Design Guidelines for rural houses states that extensions should be subsidiary to the main dwelling. This does not comply with the Settlement Strategy as set out in Section 3 of the CDP.
- Section 3.3.5 requires the renovation of existing buildings to constitute an identifiable dwelling, with walls being generally intact. Furthermore, in the case of extensions, the scale and architectural treatment shall be sympathetic to the character of the original structure and surrounding development.
- The horizontal emphasis of the design of the proposed dwelling would be visually obtrusive close to the L6546 and would not be in keeping with the existing houses in the locality. It is not possible to verify the height as the FFL has not been specified. It would fail to be absorbed or integrate into the

landscape and would seriously injure the visual amenities of the area and would be contrary to the policy and design guidance in the CDP.

## **5. Residential amenity**

- Proximity to boundary – the proposed extension dwelling regarding the distance to the boundary or the FFL. As the side elevation contains a bathroom window which would directly overlook his property, it is considered that it would interfere with the residential amenity of the appellant's property.

## **6. Traffic and Transport**

- Proximity to appellant's entrance – the proposed entrance is too close to the adjoining site entrance to the north. The entrance to the appeal site was only ever used for agricultural purposes as the previous occupant never had a vehicle. A vehicle has already hit and damaged one of the entrance walls.
- Substandard road - The local road is substandard in terms of width and alignment and there is a very dangerous bend in the road with a large cave opening on the inside of the bend. The additional turning movements generated by the development will endanger public safety by reason of traffic hazard. The proposal would therefore interfere with the free flow of traffic and obstruct other road users. The previous application was refused on these grounds.
- Inadequate sightlines at entrance - Sightlines at the junction of the site and the public road are inadequate and the proposed development will therefore give rise to a traffic hazard. During construction the entrance will be obstructed as the existing house is very close to the road. The additional construction traffic would give rise to a traffic hazard.

### **6.2. Planning Authority Response**

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

### **6.3. First party response to the Grounds of Appeal**

A response was submitted from the first party on 5<sup>th</sup> July 2021. The response is mainly in the form of a rebuttal but makes the following points of note:-

- The appellant's objection is the only one from the surrounding area. The design of the dwelling is intended to allow it to blend in with the surrounding area. Other residents in the area would be delighted to see the existing cottage renovated and lived in.
- The proposed development would not result in overlooking as there is an existing hedge which is to be retained with further landscaping and hedge planting planned. The bathroom window overlooks the stables area, and it would be fitted with frosted glass.
- Concern was expressed regarding the video contained in the USB which was taken from their property without their consent. This is considered to be unlawful and disrespectful.

## **7.0 Assessment**

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

- Rural settlement policy
- Visual amenity
- Residential amenity
- Adequacy of drainage proposals
- Traffic and Transport
- Environmental impact assessment
- Appropriate assessment

### **7.2. Rural settlement policy**

7.2.1. National guidance as set out in the NPF 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. The planning reports indicate that the site is located in a 'Stronger Rural Area' as set out in the current Kerry CDP, which is 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. Relevant policies for Stronger Rural Areas include Objectives RS-10 and RS-11 which 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. It is also located in an area designated as a Rural General Amenity Area, which relates to the least sensitive landscapes with a moderate assimilative capacity for development. The level of development is also regulated by settlement policies in accordance with Section 3.3.1, Table 3.7 and Objectives RS1-RS-4 of the Development Plan. The applicant must demonstrate that the proposed dwelling shall be used as a permanent place of residence.

7.2.2. Notwithstanding the above, as stated previously, the site appears to be either within or in very close proximity to a Rural Area Under Strong Urban Influence, (Map 3.1 of the CDP and Figure 2 of the Tralee-Killarney Hub Functional Area LAP). These areas are described as being in proximity to the immediate environs or close commuting catchment of the Hub Towns and larger towns, rapidly rising populations, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area and pressures on infrastructure such as the local road network. There are three further objectives which relate specifically to Rural Areas Under Strong Urban Influence, namely, **RS-7** which seeks to provide for housing requirements of immediate family members of farms and landholdings, **RS-8** which seeks to facilitate the provision of dwellings for people who are intrinsic to the area with priority given to occupation of vacant units and completion of unfinished dwellings, and **RS-9** which seeks to facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages.

7.2.3. The site is located in a rural area which is one that appears to be under intense pressure for urban generated housing. The site is located a short distance from Tralee town (4.5km) and is within reasonable commuting distance of both Killarney and Castleisland. There is a strong presence of one-off housing in the general area, particularly further to the south near the N21, which is a strategic national primary

route, and to the north along Ballinorig Road. This pattern of development is unsustainable and is strongly discouraged in both national and local settlement policies as it tends to devalue the countryside by damaging the landscape, water quality and biodiversity and creates additional demand for the supply of infrastructure and services and increases car dependency and high energy use.

7.2.4. The submissions in relation to the application and appeal set out the applicants' circumstances. The site is a stand-alone site which does not appear to form part of a larger farm or landholding. One of the appellants is self-employed in the construction industry and works as a block layer, with no particular geographical area of work. The other appellant works as a civil servant in Killarney. They are currently in rented accommodation and live in Ardfert, which is located to the northwest of Tralee. It has been confirmed that the applicants are the current owners of the site and that it is their intention to make the renovated and extended house their primary permanent place of residence. The Supplementary Information provided indicates that neither of the applicants are from the locality, but one of the applicants, Mr. O'Neill, had spent several summers with aunts and uncles in the Ballymacelligott area. The Board should note that no documentary evidence has been provided to substantiate these statements.

7.2.5. The policy for a Stronger Rural Area, which is less stringent than that for a Rural Area Under Urban Influence, requires a proof that the applicant is intrinsic to the local area. The applicants have not provided any evidence to demonstrate that they are an intrinsic part of the community in which either of them was raised. Furthermore, I would not accept that the applicants have a rural generated housing need for a house at this location in view of their employment circumstances which is not based in the locality. Thus, even if it were to be accepted that one or both of them might meet the criteria for being an intrinsic part of the community, there is no specific need to reside in this location on the basis of an economic or social imperative, as set out in NPF Objective 19.

7.2.6. It is acknowledged that there is an existing cottage on the lands which it is proposed to renovate and extend, and that the settlement policy includes favourable consideration of proposals for renovation of existing vacant dwelling houses, and that in Areas Under Strong Urban Influence, priority will be given to occupation of such units over the construction of new units. However, the existing cottage is in a

very derelict and uninhabitable state with no services and has not been lived in for many years. It is further considered that this policy does not override the need to demonstrate the intrinsic connection with the rural area and the genuine rural generated housing need, which has not been adequately made in this instance. Furthermore, as the area is one which appears to be under intense pressure for urban-generated housing, it would undermine the settlement policies to consolidate growth in towns and villages in such areas. The policy of the planning authority is to strengthen towns and villages to make them more attractive places to live and to protect the countryside from unnecessary urban-generated housing. The proposed development should, therefore, be refused on this basis as it is not in accordance with the rural settlement policies for the area.

### **7.3. Visual amenity**

- 7.3.1. 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. The proposed development should, therefore, be capable of being successfully integrated into the landscape and should not be unduly obtrusive in their siting and design. The P.A. is also favourably disposed to the renovation and restoration of existing structures and to the completion of derelict and vacant buildings in the rural countryside for use as permanent primary residences (3.3.5 Kerry CDP). Objective RS-16 seeks to provide favourable consideration for conversion and reuse of existing traditional farm buildings and rural houses.
- 7.3.2. The following provisions (3.3.5) shall apply:
- The structure to be restored/renovated shall constitute an identifiable dwelling, with the walls being generally intact
  - In the case of refurbishment and extension proposals, the scale and architectural treatment of proposed works shall be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development.
- 7.3.3. The proposed development involves the renovation of a cottage, which is clearly identifiable as a dwelling and its extension to form a single-storey 4-bedroomed bungalow. The cottage is of a vernacular architecture with a narrow plan, traditional windows and a slate roof. It is very small with a stated floor area of 50sq.m, with a



width of only 7.25m and a depth of 5.0m. The proposed extension is almost four times the size of the original dwelling and is attached to the rear and side. It would project over 13 metres beyond the side gable wall, but would be set back so that the original cottage would remain as a stand-alone element at the front.

- 7.3.4. It is considered that the design approach is reasonably successful in terms of retaining the cottage as a stand-alone element to the front. However, the removal of the traditional windows and door openings and their replacement with windows to match the rest of the proposed bungalow results in the loss of the character of the cottage. In addition, the scale of the extension is so excessive that it dwarfs the cottage, and the architectural treatment fails to demonstrate a sympathetic approach to the vernacular building. The span of the roof is such that the roof profile of the extension differs considerably from that of the original cottage and emphasises the difference in scale and design between the old and the new. Furthermore, the insertion of the front door at the end of the extension (rather than keeping it within the front elevation of the original cottage) creates confusion of architectural styles and detracts from the character of the original structure.
- 7.3.5. Although the appeal site is currently well screened by existing vegetation, it is proposed to remove this in order to achieve appropriate sightlines. However, the lands are generally elevated with ground levels falling towards the River Lee to the west. The gradient of the site also slopes from east to west, with levels shown on the submitted drawings falling from c.41.6m OD in the north-eastern section to c.39.4m OD in the south-west. Furthermore, as pointed out by the appellant, the proposed FFL is not stated. Thus, it is not clear whether the proposed dwelling would be designed and sited to minimise visual intrusion and would be readily absorbed into the landscape.
- 7.3.6. It is considered, therefore, that the proposed development would not be in accordance with the Development Plan policies to restore and renovate existing vacant and derelict cottages by reason of the excessive scale, inappropriate design and architectural treatment of the proposed extension and renovation.

#### **7.4. Residential amenity**

- 7.4.1. The appellant to the east/northeast has expressed concern that the proposed dwelling would be too close to their dwelling, would overlook it and would interfere

with his residential amenity. The first party has responded by stating that the proposed extension would overlook a horse arena and stables area and the only window that could give rise to overlooking is the bathroom window which would be fitted with obscure glazing.

- 7.4.2. The proposed extension would be quite close to the boundary, no distance given, but I estimate to be approx. 1 metre. However, I would agree that there is existing screening along the boundary which would be enhanced and reinforced by additional planting. The eastern boundary is bounded on the appellant's side by a long driveway with an equestrian arena adjacent to the public road. The appellant's farmhouse appears to be set back quite a distance from the public road, with a front garden and stables area between the arena and the house. I would estimate that the dwelling house would be c.28m behind the proposed extension to the cottage. As noted by the applicant, the bathroom window would be of frosted glazing. However, the rear elevation of the extension would also contain bedroom and living room windows which would face the appellant's house, albeit at an obscure angle. The distance and intervening vegetative screening, together with the single-storey nature of the development would mitigate any loss of privacy.
- 7.4.3. Given the siting and design of the proposed development, the existing layout of the adjoining site, together with the existing and proposed landscape screening, it is considered that the proposed development would not give rise to any significant level of overlooking or loss of privacy. The proposal would not, therefore, result in any significant injury to the residential amenities of neighbouring properties.

## **7.5. Adequacy of drainage proposals**

- 7.5.1. Drainage issues have been raised in respect of both the design and layout of the proposed wastewater treatment system and the nature of the geology on the site, which would militate against the provision of an appropriate private wastewater treatment system at this location. In terms of the design and layout, the appellant has raised concerns regarding lack of adherence to the Minimum Separation distances in Table 6.2 of the EPA Code of Practice (2009). In particular, the karstic nature of the site with caves, swallow holes and other karstic features, and the presence of an underground river which it is claimed runs underneath the cottage, require distances of 15m and 10m respectively.

- 7.5.2. The site is underlain by a Regionally Important Aquifer which has a vulnerability of Extreme. The OSI maps of the area indicate the presence of a cave on the site. The appellant, who has local knowledge of the area and who has been advised by his son who is an Engineer, is adamant that there is an underground river with a karstic system of caves, sinkholes and shakeholes underlying the site. Documentation has been provided to demonstrate that the Ballymacelligott cave system is well known in the vicinity of the site and the Kerry County Development Plan, Chapter 10 – Natural Environment and Flood Risk Management includes reference to such geological features. Policy NE-27 seeks the preservation of important features of geological interest and to maintain the conservation value of those features and to protect them from inappropriate development. In Table 10.6 (Appendix to CDP) and associated Map, the County Geological Sites designated under the Geological Heritage Programmes are identified. Ballymacelligott Cave system is included in this list of Sites of Geological Interest. It is identified as a Classic Cave system and includes the townlands of Potaley, Lissooleen and Kilquane, within which the appeal site lies.
- 7.5.3. The applicants' response to this issue is to state that no evidence of a cave/cave system was found on site. However, bedrock was encountered at 1.65m, which the appellant believes could have been the roof of a cave. Although the water table was not encountered, this does not mean that there is not a karstified geology which would provide for a rapid route to the water table. It is considered that in light of the information on the file, there remains considerable uncertainty regarding the underlying geology of the site and in these circumstances, it is considered that there is insufficient information before the Board to be satisfied that there would be no risk to public health arising from the proposed development.
- 7.5.4. Notwithstanding the proposal to install a proprietary system, a Tricel P6 WWTP, which is considered to be adequately sized for a PE of 6, it is not certain whether the wastewater treatment system would be able to comply with all separation distances listed in Table 6.2 of the EPA Code of Practice Wastewater Treatment and disposal systems Serving Single Houses (pe<10), 2009.
- 7.5.5. It is considered that having regard to the information submitted with the application regarding the characteristics of the site and design of the proposed treatment system, and to my observations on site, I am not satisfied on the basis of the submissions made in connection with the application and appeal, that the site can be

adequately drained to avoid any adverse impact on adjoining properties and would not be prejudicial to public health.

## **7.6. Traffic and transport**

- 7.6.1. During my site inspection I observed that the road serving the site is substandard in width and alignment and has substantial mature hedgerows along the site boundaries which significantly reduce forward visibility. The site is located on a bend and an incline and there is an existing entrance immediately to the north which is to a farmhouse with an associated equestrian centre.
- 7.6.2. Concerns raised regarding the entrance relate to inadequate sightlines. However, the FI submitted on 14<sup>th</sup> April 2021 indicated that it is proposed to remove the vegetation along the roadside boundary to achieve sight distances of 90 metres in each direction from the site entrance and to maintain the height of the site boundary to 1.0m above road level. I am not convinced that the proposed works to the boundary would be adequate to address the substandard nature of the road in the vicinity of the site and along the site boundary. The road is very narrow and winding and there is no room for passing. Although I would accept that it was lightly trafficked at the time of my inspection, I note that there are significant clusters of one-off houses to the north of the site on Ballinorig Road which is likely to generate passing traffic, particularly at rush hour. In addition, it is likely that agricultural traffic will be using the road and the entrance immediately to the north.
- 7.6.3. It is considered, therefore, that the traffic movements generated by the proposed development are likely to give rise to a traffic hazard and obstruction of road users due to the substandard nature of the road and the network of local roads in the area, and to the pattern of development in the vicinity of the site.

## **7.7. Environmental Impact Assessment**

- 7.7.1. The proposed development is for the extension and renovation of a single dwelling house, and provision of wastewater treatment system, which will involve secondary treatment of wastewater with a polishing filter. The proposed development is not of a class of development that requires Environmental Impact Assessment. The need for environmental impact assessment can, therefore, be excluded at pre-screening stage and a preliminary examination or screening determination is not required.

## **7.8. Appropriate Assessment**

7.8.1. The closest European sites are as follows:

- Ballyseedy Wood SAC (Site code 002112) - c.2.3km to the southwest
- Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) – c.3.1km to the north
- Slieve Mish Mountains SAC (Site code 002185), c.4.9km to southwest
- Lower River Shannon SAC (Site Code 002165) – c.7.1km to northeast
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code 002070) - c.7.3km to west
- Tralee Bay complex SPA (Site code 004188) – c.7.3km to the west

7.8.2. 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 site is located in a Stronger Rural Area which has experienced intense pressure for urban generated housing development and is within easy commuting distance of several urban centres including Tralee and Killarney Hub towns, where it is the policy of the planning authority as set out in the settlement strategy of the Kerry County Development 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 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 applicants do not come within the housing need criteria as set out in the guidelines and in the Development Plan for a house at this location, notwithstanding the proposal to renovate and extend an existing cottage which is very small in size and in a derelict and uninhabitable state, and the Board is not satisfied that the housing need could not be satisfactorily met in an established settlement. The proposed development would, therefore, be contrary to national and local policy and to the proper planning and sustainable development of the area.

2. The proposed renovation and extension of the existing traditional cottage would, by reason of its excessive scale and inappropriate architectural treatment and design, result in a structure which would overwhelm the original cottage and fail to integrate with the character of the original vernacular rural dwelling. The proposed development would, therefore, seriously injure the visual amenities of the rural area and would be contrary to the proper planning and sustainable development of the area.
3. The site is located in a karstified area which includes an extensive network of caves and associated geological features which are listed for protection in the current Kerry County Development Plan (Table 10.6). Having regard to the complex geology of the area, to the Regionally Important Aquifer of Extreme Vulnerability which underlies the site and to the lack of information regarding the hydrogeology of the site, the Board is not satisfied on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a private water treatment system, notwithstanding the proposal to use a proprietary treatment system and polishing filter. The proposed development would, therefore, be prejudicial to public health.
4. The site is accessed by means of a local road which is substandard in width and alignment and serves several large clusters of residential development along the route. The entrance to the site is substandard in respect of the sightlines available, particularly in a southerly direction, where there is a sharp bend and by the presence of an existing agricultural and residential entrance immediately to the north. Notwithstanding the proposal to improve the sightlines at the entrance, the Board is not satisfied that the proposed

development would not endanger public safety by reason of a traffic hazard by reason of the additional traffic that would be generated along the route and by the additional turning movements at the site entrance.

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Mary Kennelly

Senior Planning Inspector

16<sup>th</sup> January 2022