



An
Bord
Pleanála

Inspector's Report ABP-310566-21

Development	To construct a new dwelling house, connected to a mechanical aeration unit and a sand polishing filter, and all associated site works.
Location	Tonbwee, Castleisland, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21/345
Applicant(s)	Rachel & Cathal Flood
Type of Application	Permission
Planning Authority Decision	Grant, subject to 12 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Derek & Kay O'Connell
Observer(s)	None
Date of Site Inspection	12 th August 2021
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy and Context.....	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	4
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Applicant Response	6
6.3. Planning Authority Response	6
6.4. Observations	6
6.5. Further Responses.....	6
7.0 Assessment	7
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	12
10.0 Conditions	12

1.0 Site Location and Description

- 1.1. The site is located 0.9km to the south of the town centre of Castleisland in the townland of Tonbwee. This site is accessed off an unsealed lane at the southern end of the local road. It is accompanied by 4 dwelling houses to the north, which are clustered around the end of the local road, and a single dwelling house further to the south, which is accessed off the lane. Beyond fields to the west lie several dwelling houses in their own grounds and a modern housing estate, Cahereen Heights.
- 1.2. The site is of regular shape and it extends over an area of 0.16 hectares. This site is the subject of a gentle downwards gradient in southerly and easterly directions. It is vacant at present. The existing access is via an opening from the lane in its eastern boundary. This boundary, and the western one, are denoted by means of hedgerows. The northern boundary is denoted by means of a post and wire fence. The appellants' dwelling house lies to the north of this boundary. The southern boundary is denoted by a mound, trees, and ditch, beyond which lie a paddock and the dwelling house to the south of the site.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a four-bed/eight-person dwelling house with a floorspace of 218.5 sqm over ground and first floors. This dwelling house would be sited centrally on the site and its design would incorporate gables to each elevation, one of which would be part of a projecting feature on the front elevation. This elevation would also have with a gabled dormer window. A single storey element on the southern elevation would incorporate a pitched roof a flat roof with two parapet edges. This dwelling house would be finished in white render under a slated roof.
- 2.2. The dwelling house would be served by a new access to the site off the lane. This access would be sited in the north-eastern corner of the site and it would connect to a driveway which would serve a parking/manoeuvring area in front of the dwelling house. The dwelling house would also be served by a mechanical aeration unit and a sand polishing filter, which would be sited to the rear of the dwelling house and adjacent to the western boundary of the site.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 12 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Residential amenity is discussed. The FFL of the existing dwelling house to the north would be 0.65m higher than the proposed dwelling house. The existing dwelling house has a first floor bedroom window in its southern side elevation 7m from the common boundary and the proposed dwelling house would have a first floor bedroom window 6m from this boundary. In these circumstances, the case planner considered that the new first floor window would be acceptable.

3.2.2. Other Technical Reports

- Irish Water: No objection + standard observations.
- Kerry County Council: Site Assessment Unit: No objection, subject to conditions.

4.0 Planning History

PP: 20/440: Pre-planning consultation occurred on 3rd November 2020.

5.0 Policy and Context

5.1. Development Plan

Under the Killarney Municipal District Local Area Plan 2018 – 2024 (LAP), the site is shown as lying within the settlement boundary around Castleisland and in an area zoned R2.6, “existing residential”.

5.2. Natural Heritage Designations

- Castlemaine Harbour SAC (000343)

- Castlemaine Harbour SPA (004029)

6.0 The Appeal

6.1. Grounds of Appeal

Derek & Kay O'Connell of Tonbwee, Castleisland, Co. Kerry

- The appellants allege that the applicants' existing residence at No. 8 Island View, Pound Road, Castleisland is not one that they rent but which Rachel owns (cf. extract from Folio 52155F). They also allege that Cathal owns a dwelling at Kilcusnan, Cordial, Castleisland. Consequently, the need for the proposed dwelling is questioned.
- Attention is drawn to the first floor bedroom window in the northern side elevation of the proposed dwelling house. Views from this window would overlook existing windows at ground and first floor levels in the corresponding southern side elevation of the appellants' dwelling house. This bedroom window should therefore be omitted to safeguard their privacy.
- The treatment of the common boundary between the adjoining house plots has not been addressed. The appellants request that this boundary be enclosed by a 2m high masonry wall, capped and rendered on both sides, to again safeguard their privacy. (This wall should begin at the front building line of the two dwelling houses and extend westwards).
- The proposed dwelling house would be sited 5.5m from the common boundary. It should be re-sited further to the south on the site to ensure that direct sunlight is maintained to the windows in the appellants' dwelling house cited above.
- A stream on the southern boundary of the site. This stream has flooded onto the site in recent years, and so the appellants are concerned that it might affected the proposed WWTP.
- The local road, which serves the site, is of single lane and it already serves existing dwelling houses along its length. Traffic generated by the proposed dwelling house would add to existing congestion.

6.2. Applicant Response

- Attention is drawn to the appellants citation of “Tonabee” when “Tonbwee” is the townland. Likewise, the applicants’ place of residence is referred to as “8 Island View” when it is “Island Village”. The applicants acknowledge that they incorrectly ticked the “rent” box on the application form rather than the “own” box. They did not intend to mislead, and Rachel’s letter of support did not refer to the renting of their current residence. Attention is also drawn to the site’s zoning under the LAP as “existing residential”.
- With respect to the first floor bedroom window, attention is drawn to the case planner’s discussion of this window and his conclusion that it would be acceptable.
- With respect to the treatment of the common boundary, the case planner’s view is again cited to the effect that a hedgerow would be more appropriate than a wall in what is a quasi-rural setting.
- The siting of the proposed dwelling house would be set back more than the normal distance and so any re-siting would not be necessary.
- Reference to a stream is misplaced: Along the southern boundary there is a land dyke, which is shallow and dry. Furthermore, the Site Characterisation Form noted that there is no stream within 250m of the site.

6.3. Planning Authority Response

None

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the Kerry County Development Plan 2015 – 2021 (CDP), Killarney Municipal District Local Area Plan 2018 – 2024 (LAP), the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use and access,
- (ii) Visual and residential amenity,
- (iii) Water, and
- (iv) Appropriate Assessment.

(i) Land use and access

7.2. Under the CDP and the LAP, the site is shown as lying within the settlement boundary around Castleisland and in an area zoned R2.6, “existing residential”. This site, therefore, lies within the urban area of Castleisland, albeit it has yet to be developed.

7.3. The appellants present their understanding that the applicants own existing dwelling houses and so they question whether they have a housing need. The applicants have responded by drawing attention to the above cited urban status of the site within the LAP. Accordingly, the need to demonstrate housing need does not arise with respect to the proposed development of this site.

7.4. The site is, and it would be, accessed off an unsealed lane that represents a continuation of a local road southwards from the L2037 town centre relief road. The local road runs on a north/south axis from Castleisland town centre. In places it is of single lane width only.

7.5. The proposal would generate traffic, which the appellants consider would increase congestion, presumably, upon the local road. At present this road serves existing dwelling houses along its length. Within this context, traffic generated by one additional dwelling house would not have a significant effect upon any existing congestion.

7.6. The proposed access would replace the existing one to the site. This access would be sited in the north-eastern corner rather than towards the centre of the eastern

boundary. It would thus be as close to the end of the local road as the site would allow, i.e. it would minimise the length of unsealed lane that would be traversed by road users going and coming to the proposed dwelling house.

- 7.7. The applicants have not indicated that they would be in a position to improve the lane. I note that the settlement boundary excludes lands on the opposite side of this lane from the site and so the proposed dwelling house, if permitted and built, may remain the only additional one to be served by the lane. I note, too, from my site visit that the lane is of straight horizontal alignment and that the sightlines available from the proposed access would be adequate to ensure reasonable visibility to drivers egressing from the site. In these circumstances, while desirable, I do not consider it to be essential that the lane is provided with a sealed surface in conjunction with the current proposal.
- 7.8. A detailed design of the proposed access should be conditioned.
- 7.9. I conclude that the proposal would be acceptable, in principle, from a land use perspective and that proposed access arrangements would be adequate to serve the new dwelling house.

(ii) Visual and residential amenity

- 7.10. The proposed dwelling house would be sited centrally within the site, in a position whereby its front and rear building lines would be similar in their alignment to those of the appellants' dwelling house to the north. This dwelling house would be similar in size to this adjacent dwelling house and its FFL would be slightly lower at 31.6m compared to 32.25m.
- 7.11. The proposed dwelling house would be of shapely form and attractive design. It would incorporate gables to each elevation, with one being comprised within a projecting feature on the front elevation and accompanied by a gabled dormer window. Internally, spacious accommodation would be provided for up to eight residents. Externally, too, the grounds would be generous.
- 7.12. The appellants draw attention to three aspects of the proposal, with which they take issue.

- Firstly, the siting of the dwelling house should be moved further south to ensure that the impact upon lighting of windows in the southern elevation of their dwelling house is minimised.
- Secondly, the siting of a bedroom window in the northern gabled elevation would correspond with a similar bedroom window in the southern gabled elevation to their own dwelling house. As the separation distance between these two elevations would be c. 13m, concern is expressed that overlooking would lead to a loss of privacy.
- Thirdly, the proposed supplementing of the existing post and wire fence along the northern boundary, between the two adjoining sites, with planting is considered to be unsatisfactory, again from a neighbour privacy perspective. Instead, they request that a 2m high wall be erected, rendered, and capped. This wall should begin at the front building line of the two dwelling houses and extend westwards.

7.13. The appellants have responded to these issues.

- Firstly, they draw attention to the set back distance of 6m from the northern boundary, which would be greater than normally occurs. They, therefore, contend that any re-siting further to the south would be unnecessary.
- Secondly, they draw attention to the case planner's assessment of the window in question. Essentially, he contends that as the corresponding elevations would be set back similar distances from the common boundary between them, the proposed window should be accepted.
- Thirdly, they draw attention, again, to the case planner's assessment of the boundary treatment in which he states that a hedgerow rather than a wall would be more appropriate to the site's quasi-rural setting.

7.14. During my site visit, I observed the southern elevation of the appellants' dwelling house from within the applicants' site. I noted the presence of ground and upper floor windows in this elevation. I noted, too, its set back from the common boundary. The separation distance that would arise between this elevation and the corresponding one on the proposed dwelling house would be c. 13m. This distance is the conventional suburban separation distance between two storey dwelling houses,

where typically a rear elevation of one corresponds with the side elevation of another. It is designed to ensure that reasonable lighting is maintained to windows in the rear elevation. In this case, neither of the 2 dwelling houses would be fully two storeys and the existing one would have a FFL 0.65m higher than the proposed one. In these circumstances, I do not consider that there is any need for the proposed dwelling house to be re-sited further away from the existing one.

- 7.15. I understand the case planner's view that equity would suggest that the applicants should be allowed an equivalent window to the appellants. However, as the appellants' dwelling house is in-situ and so was designed without the knowledge of the applicants' one, I do not consider that their situations are on a par. The suburban separation distance cited above would normally preclude corresponding first floor habitable room windows. In this case the window would be a secondary one and so I consider that its re-specification as a high-level window would allow some light and ventilation to be admitted, while minimising the risk of overlooking.
- 7.16. I concur with the view that a hedgerow rather than a wall would be the more appropriate supplementary treatment to the northern boundary fence. However, insofar as a period of time would elapse before such a hedgerow was established sufficiently to afford neighbour privacy, I consider that a temporary timber panel fence should be erected. These matters should be the subject of a landscaping condition.
- 7.17. I conclude that the proposal would, subject to some minor alterations, be compatible with the visual and residential amenities of the area.

(iii) Water

- 7.18. The proposed dwelling house would be connected to the public water mains. Irish Water has raised no objection, in principle, to such connection.
- 7.19. The applicant proposes to discharge surface water from hard surfaces on the developed site to a soakaway.
- 7.20. The OPW's flood maps do not show the site as being the subject of any identified flood risk. The appellants state that the stream on the southern boundary of the site has flooded in recent years. The applicants state that there is a dry land dyke along this boundary rather than a stream. During my site visit, I observed this dyke, which was dry. The appellants express concern that the proposed percolation area may be

adversely affected by any flooding. I will address this concern after I have discussed the proposed treatment of foul water.

7.21. The applicant proposes to treat foul water on-site by means of a Tricel P6 mechanical aeration unit and a raised Sandcel 900 sand polishing filter. To this end a Site Characterisation Form (SCF) has been completed, details of which are summarised below.

- The aquifer is regionally important and of low vulnerability. The response matrix is thus R1.
- The direction of groundwater is east/south-east.
- The trial hole was dug to a depth of 2.3m. Groundwater was encountered at a depth of 2m. The topsoil was composed of silt/clay and the sub-soil was composed, initially, of silt with some small cobbles present, and, thereafter, of silt/clay with cobbles present.
- The T-test holes yielded an average result of 39.36 min per 25mm and the P-test holes yielded an average result of 24.14 min per 25mm. Given these results, under Table 6.3 of the EPA's relevant Code of Practice, the site is suitable for a secondary treatment system with a polishing filter.

7.22. In the light of the SCF, the selected mechanical aeration unit and sand polishing filter would be suitable to serve the proposed dwelling house on the site. The siting of the sand polishing filter would be adjacent to the western boundary of the site. The site slopes gently downwards from this boundary to the east and over its eastern half from north to south, too. The sand polishing filter would thus be sited in the highest portion of the site and it would be set within a raised area that would be c. 1m above the existing site level. (The proposed dwelling house would also be sited on a slightly elevated base). In these circumstances, while I am not in a position to say definitively if the ditch on the southern boundary would pose a flood risk, I consider that the above cited factors would mitigate against such a risk should it materialise.

7.23. I conclude that the proposal would raise no water issues.

(iv) Appropriate Assessment

7.24. The site is neither in nor near to a European site. The River Shanowen flows through Castleisland south-westwards to the River Maine and on into Castlemaine Harbour,

which is designated a SAC and a SPA. However, I am not aware of any hydrological link between the site and the River Shanowen and so no source/pathway/receptor route between it and these European sites exists. Likewise, no such routes exist between the site and other European sites in the wider area. Accordingly, the proposal, which is for a dwelling house, would not be likely to have any significant effect on the Conservation Objectives of this or any other European site.

- 7.25. Having regard to the nature, scale and location of the proposal, the nature of the receiving environment, and the proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be granted.

9.0 Reasons and Considerations

Having regard to the Kerry County Development Plan 2015 – 2021 and the Killarney Municipal District Local Area Plan 2018 – 2024, it is considered that, subject to conditions, the proposal for a dwelling house on the site would be appropriate from a land use perspective and it would be compatible with the visual and residential amenities of the area. The dwelling house would afford an acceptable standard of accommodation and it would be capable of being accessed satisfactorily. No water or Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning
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	<p>authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) A detailed design of the proposed access shall be prepared.</p> <p>(b) The first-floor window in the northern side elevation of the dwelling house shall be respecified as a high-level window.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of residential amenity.</p>
3.	<p>The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>(a) The establishment of a hedgerow along the northern boundary of the site, and</p> <p>(b) The erection of a temporary timber fence along the northern boundary from the front building line of the dwelling house to the north-western corner of the site. A timetable for the removal of this fence in conjunction with the anticipated establishment of the accompanying hedgerow shall be stated.</p> <p>Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p>

	<p>Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.</p>
4.	<p>The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>The external walls shall be finished in neutral colours such as grey or off-white.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with</p>

	<p>professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution of €2,649 (two thousand, six hundred and forty-nine euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Hugh D. Morrison
Planning Inspector

22nd September 2021