



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310733-21

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<b>Development</b>	Retention permission for domestic garage and garden shed and permission to retain and complete upgrade the existing foul water treatment system.
<b>Location</b>	Lissyconnor, Rathmore, Co Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	201176
<b>Applicant(s)</b>	Michael O Donovan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jean Claude Balleur, Mrs Elizabeth McCluskey Balleur.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	13 <sup>th</sup> August 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

1.1. This appeal relates to a rural residential site located within the townland of Lissyconnor circa 2.6km to the north of Rathmore in County Kerry. The appeal site has a stated area of 0.247hectares and is occupied by a single storey bungalow type dwelling. The site is one of three dwellings known collectively as Slieve Álainn recognised as a rural estate which was constructed circa 2005 and was apparently taken in charge by Kerry County Council in September 2018. The dwellings are serviced by way of a single entrance from the public road to the north. Each dwelling has an individual wastewater treatment system within its own curtilage. There is an open drain along the rear of the sites with a piped drain along the roadside boundary to the north. The area is predominantly characterised by agriculture and forestry with significant one-off housing development also in evidence. Lands to the rear / south are forested.

## 2.0 Proposed Development

- 2.1. The application involves permission for the retention of the domestic garage and garden shed located to the side and rear of the dwelling. The garage has an area of 67.5 sq.m. ad has a colour coated metal clad wall and roof finish and is constructed on a concrete base. The garden shed is 9.5 sq. also colour coated metal on a concrete base. It is outlined that the garage is used for domestic storage purposes.
- 2.2. In response to the request for additional information the development description was amended to include for upgrade of the existing foul water system.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 10<sup>th</sup> June 2021 Kerry County Council issued notification of the decision to grant permission and 9 conditions were attached which included the following.

Condition 3 garage and garden shed to be used for domestic storage purposes only and not for any commercial or agricultural uses.

Condition 5. Landscaping and screening to be carried out within the first growing season following receipt of permission.

Condition 7. Wastewater treatment system in accordance with EPA Code of Practice.

Condition 8. Certification of wastewater treatment system.

Condition 9. Condition 9. Maintenance Service Contract for ongoing maintenance of wastewater treatment system.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planner's initial report sought additional information to include clarification of the need for a shed of this size. Details of any impact on wastewater treatment system. Landscaping scheme to address site boundaries. Final report recommends permission subject to conditions.

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

Environment Section report - no objection subject to conditions.

## **3.3. Third Party Observations**

3.3.1 Submission from the appellants JC Balleur & E McCluskey neighbouring residents to the east of the site.

- Lament the retrospective nature of the application and apparent disregard of rules and regulation
- Note works carried out to septic tank prior to construction.
- Concern regarding potential use of the garage. Scale inappropriate.
- Surface water run-off issues will be exacerbated.

3.3.2 Second submission following further information response indicates no objection to wastewater system upgrade or landscaping. Maintain concerns regarding surface water run-off.

3.3.3 Submission from Danny Healy-Rae TD strongly supports the application. As much consideration as possible should be given to the application.

## 4.0 Planning History

02/1517 Outline permission granted to construct 3 no dwelling houses and enviropak treatment units and percolation area

04/2554 Approval granted to construct 3 no dwelling houses complete with puraflow wastewater treatment units.

## 5.0 Policy Context

### 5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers.

### 5.2. Natural Heritage Designations

5.2.1 The site is not within a designated area. There are a number of sites in the vicinity including: The Blackwater Rover (Cork Waterford) SAC (Site Code 002170) occurs within 1km

Killarney National Park Magillycuddy's Reeks and Caragh River Catchment SAC (Site Code 000365) within 7 km to the west

Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (Site Code 004161) within 9km to the north

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Mr Jean Claude Balleur and Mrs Elizabeth McCluskey Balleur, 1 Sliabh Álainn owners of the adjoining property to the east. Grounds of appeal are summarised as follows:

- Issues with drainage of the estate comprising field system of open ditches which also caters for the forestry to the south will be exacerbated by the additional run off.
- Gully across the entrance from the public road damaged by traffic and flow is impeded due to lack of maintenance of the neighbouring ditch.
- Size of the garage is excessive. Visual impact is more like a warehouse.
- Condition 3 regarding use will be difficult to enforce.

### 6.2. Applicant Response

The first party response includes cover letter by Denis Quinn and Associates and a letter from the applicant Michael O Donovan and is accompanied by a number of enclosures including a letter from Kerry County Council confirming the taking in charge and site photographs and a drainage map to elucidate the arguments made. Response is summarised as follows:

- Applicant purchased the house approximately 2 years ago.
- Estate has been taken in charge by Kerry County Council.
- Following purchase of the house and discovery and investigation of problems with foul drainage system works were carried out to ensure all wastewater was directed to the foul treatment system and a new wastewater treatment system was installed. It is proposed to complete upgrade works by way of provision of a soil polishing filter which will have a positive environmental impact.
- Shed is intended for domestic storage.

- Two gullies and a pipe have been installed under the concrete apron have and rainwater is to be connected to soakaway to the front garden.
- Drainage issues from the wider estate are not relevant to the shed.
- Similar garage structure on the adjoining property to the west.
- Existing drainage network includes a network of underground drains and pipes drainage to soakaways within each site. Open drain to the north and south of the estate flow in an easterly direction. Drain to the south flows into the forestry. Demonstrated on map appended. A collective approach is required by the three properties to resolve the wider surface water issue.

### 6.3. Planning Authority Response

6.3.1 The Planning Authority did not respond to the appeal.

## 7.0 Assessment

- 7.1. From my review of the file, all relevant documents and inspection of the site and its environs, I note that the main issues relate to the scale of the garage and potential use, implications in terms of surface water run off and the upgrade of the wastewater treatment system. The issue of appropriate assessment also needs to be addressed.
- 7.2. The appellant raises no issue with regard to the shed structure which is modest in scale 9.5sq.m and is to the rear of the site. The garage proposed for retention whilst extending to 67.5sq.m is not in my view out of character with existing structures in the vicinity or established pattern of development. I consider that the garage is not visually obtrusive in its context and subject to additional landscaping particularly to the eastern boundary its visual impact will be appropriately mitigated in terms of established residential amenity and the amenities of the area. I consider that subject to use as proposed as a domestic shed / store the proposal will not give rise to undue impact on amenity in terms of noise or other impacts.

- 7.3. I note that the third-party appellant expresses concern regarding the exacerbation of existing issues with surface water run-off and drainage in relation to the three dwellings and network of surface drains to the north and south. As regards the garage for retention I note that the applicant proposes to discharge surface water from the garage to the soakaway in the front garden. In my view the issue of surface water run-off with regard to the structures proposed for retention has been designed and appropriately mitigated. I would tend to concur with the first party that the wider issue of maintenance of the drains to the north and south are a wider issue requiring a collective approach in conjunction with the Council and are matters which are beyond the remit of the current appeal.
- 7.4. As regards environmental impacts with regard to wastewater treatment it is noted that the proposal involves completion of upgrade works. The former septic tank was identified as being problematic and was non-compliant in terms of the necessary set back requirements as set out in the EPA Wastewater Treatment Manuals. This septic tank was recently replaced with a mechanical treatment unit and it is proposed to complete upgrade works by way of installation of a sand polishing filter. A number of trial holes excavated on the site indicate bedrock between 2.1m deep and 2.45m deep while the water table was encountered at 1.1m and 2m depth. A T Value of 46.8 was recorded and topsoil was described as silt / clay blocky structure and medium density. Based on the details submitted it is evident that that the upgrade of the existing on-site wastewater treatment system is appropriate in the interest of public health.
- 7.5. I conclude that having regard to the size and layout of the site, and subject to the use of the garage and shed structures for purposes ancillary to the use of the dwelling house as such the development proposed for retention would not seriously injure subject to the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.
- 7.6. As regards the issue of Appropriate Assessment having regard to the nature and scale of the development proposed for retention and nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

Grant Permission subject to the following schedule of conditions.

### REASONS AND CONSIDERATIONS

Having regard to the pattern of development in the area, the design and nature of the development proposed for retention, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS

1. The development proposed for retention shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further information submitted on 5<sup>th</sup> May 2021 and 17<sup>th</sup> May 2021, 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 authority and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The garage and shed shall be used for purposes ancillary to the enjoyment of the dwelling house as such and not for human habitation.

Reason: In the interest of residential amenity.

3. Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works and services. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of public health and to ensure a proper standard of development.

4. The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 5<sup>th</sup> day of May 2021 and in accordance with the requirements of the document “Wastewater Treatment Manual: Treatment Systems for Single Houses” Environmental Protection Agency 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority.

Within three months of the grant of permission the developer shall submit a report from a suitably qualified person with 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 in accordance with the standards set out in the EPA Document.

Reason: In the interest of public health.

5. The landscaping scheme shown on drawing No 2076-004-A as submitted to the planning authority on 5<sup>th</sup> day of May 2021 shall be carried out within the first planting season following the grant of permission.

All planting shall be adequately protected until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 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.

Reason: In the interest of residential and visual amenity.

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Bríd Maxwell  
Planning Inspector

5<sup>th</sup> October 2021