



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311052-21

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<b>Development</b>	Retain dwelling house, connection to existing septic tank and soakway, and all associated site works.
<b>Location</b>	Cromane Lower, Killorglin, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	21530
<b>Applicant(s)</b>	Evelyn McCarthy.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Evelyn McCarthy.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	24 <sup>th</sup> September 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a rural coastal site located within the townland of Cromane Lower on the Iveragh Peninsula in Co Kerry. The site is located on the distinctive Cromane peninsula characterised by the low lying topography and long soft coastline. The immediate area is characterised by extensive scattered housing development of various style age and design. The significance of aquaculture to the area is also evident within the local landscape.
- 1.2. The appeal site has a stated area of 0.27 hectares and is located circa 2km to the north of the small settlement of Cromane and circa 8km west of Killorglin. Access to the site is by way of a right of way through the driveway and curtilage of an established dwelling site (home of the applicant's parents). The appeal site is occupied by a painted timber chalet type two bedroom dwelling which is occupied as a dwellinghouse. There is also a metal shed structure located to the west of the dwelling (which is not depicted on the submitted layout plans).
- 1.3. The appeal site is irregular in shape, essentially comprising two linked perpendicular placed rectangular blocks. The dwelling is constructed on the western block and the site extends southwards to incorporate part of an agricultural field (grassland) to the southeast. The south eastern block comes within circa 60m of the foreshore while the northern block is circa 120m from the foreshore of Castlemaine Harbour to the east.

## 2.0 Proposed Development

- 2.1. The application seeks permission for retention of the dwellinghouse 73.8m<sup>2</sup>, which is connected to an existing septic tank and soakaway and all associated site works. Application details outline that the dwelling replaced a previous mobile home unit that apparently occupied the site for a period of twenty years. I note that within the

grounds of appeal the nature of development was revised to provide for permission for a new septic tank and percolation area.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated 15<sup>th</sup> July 2021 Kerry County Council decided to refuse permission for the following reasons:

*“The proposed retention of a dwelling unit to the rear of existing residential development would constitute disorderly backland development and would seriously injure the residential amenities of the property in the vicinity, The proposed development would set an unwanted precedent for similar such development in the rural countryside and would, therefore, be contrary to the proper planning and sustainable development of the area.*

*It is considered that the proposed development by virtue of its design, timber finish and prefabricated nature would not integrate with residential development in the area. The proposed dwellinghouse would not comply with the ‘Building a House in Rural Kerry – Design Guidelines’ issued by Kerry County Council in 2009 and would set an unwanted precedent for similar such units in the rural countryside. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

*Based on the information submitted the Planning Authority is not satisfied that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.”*

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

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

Planner's report considers the design to be inappropriate and contrary to the "Building a House in Rural Kerry – Design Guidelines." Development would constitute backland development which would impinge on residential amenities and property values and set an unwanted precedent for similar such development in the rural area. Information on file inadequate to determine the site suitability for treatment of effluent.

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

Environment Section report seeks additional information to include a certificate from a suitably qualified person confirming that the existing on-site wastewater treatment system is fully compliant with the requirements of SI No 223 of 2012 and is capable of treating and disposing of wastewater from the development without causing environmental pollution. This will require a detailed survey of the effluent treatment system installed on site.

### **3.3. Prescribed Bodies**

No submissions.

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

No submissions.

## **4.0 Planning History**

No planning history on the appeal site.

## 5.0 Policy Context

### 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 the zoning designation.

“Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.”

Rural Housing Settlement policy includes the following main objectives.

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

As regards the settlement strategy the site is within an area identified as a stronger rural area.

*“In these areas population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural/agricultural economic base. The key challenge in these areas is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas.”*

It is an objective of the Council to:-

**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.

## 5.2. **Natural Heritage Designations**

The site is within 30m of the designated areas Castlemaine Harbour SAC (Site Code 00343) and the Castlemaine Harbour SPA (Site Code 004029).

## 5.3. **EIA Screening**

- 5.3.1. On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development which involves the retention of a single dwelling and to the nature of the receiving environment no likelihood of significant

effects on the environment arises from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal submitted by JOAM Consulting on behalf of the first party and is summarised as follows:

- Reject the assertion that the proposal would constitute disorderly backland development or injure residential amenity or set an undesirable precedent.
- Issue of precedent for development to rear of established properties is contested on basis of numerous examples of such development in the area (recent permissions cited)
- Style of housing in Cromane is a mixture of designs. Proposal a single storey pitched roof structure with treated timber façade and colour is in keeping with properties in the area. Proposal integrates with established development.
- Site is screened from the road and cannot be seen on the landscape.
- Dwelling is architecturally superior to the previous mobile home structure.
- Generic design within the Building in Rural Kerry Guidelines, not appropriate on the appeal site and would be far more visually obtrusive.
- Other houses in the vicinity constructed from a finish other than traditional plaster render, including one circa 200m north of the site and council properties with cladding 500m south of the site.
- Site can adequately treat effluent arising from proposed development. Existing system catered for effluent from a two-bedroom mobile unit for over 20 years and was properly maintained and de-sludged on a regular basis.
- Site assessment carried out and if permission is granted the applicant proposes to install a new septic tank system and percolation area.

- Applicant complies with rural settlement policy. She grew up in the area and her children now attend Cromane primary and Killorglin secondary schools.
- Current dwelling replaces the previous unit which was resided in by the applicant's grandfather. Applicant thought in error that the replacement structure was exempt.
- No objection or observation was submitted, and all neighbours are supportive of the application.
- Cromane is a rural area which suffers from de population and there is a shortage of housing accommodation locally. Applicant's family including young children contribute to sustainability of this rural location.

## 6.2. **Planning Authority Response**

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

## 7.0 **Assessment**

- 7.1. I consider that the issues raised in this appeal can be assessed under the following headings:

Principle of development – Rural Housing Policy

Backland Development impact on residential amenity visual impact and design

Wastewater Treatment

Appropriate Assessment Screening

## 7.2 **Principle of Development – Rural Housing Policy**

- 7.2.1 I note that the application indicates that the dwelling proposed for retention was constructed on the site to replace the previous mobile home which occupied the site



for over 20 years and was lived in by the applicant's grandfather. The application indicates that when the replacement dwelling was constructed it was assumed to be exempted development. I consider that the retrospective nature of the application is regrettable however the planning system provides for retrospective applications therefore it is appropriate to proceed to the assessment of the proposal on its merit.

7.2.2 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. National Planning Framework 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 County Development Plan, 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 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.

7.2.3 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. In the case of the current appeal site the applicant's parents live in the adjacent dwelling to the west (through which it is proposed to access the site) and the applicant is acquiring the site from her uncle. The applicant is currently residing within the dwelling with her children who attend the local schools. It is clear that a local rural generated housing need is proven, and this was accepted by the planning authority therefore the principle of development is acceptable in terms of rural housing policy.

### **7.3 Backland development Impact on Residential Amenity. Visual Impact and Design.**

7.3.1 A key issue in this case is the question of whether the proposal constitutes haphazard backland development. The appellant questions the contention of the local authority that the proposal would set an undesirable precedent and notes the mixed character of established development in this area. Regarding precedent for backland development in the nearby area a number of examples are cited. I have noted the cases cited within the application and I acknowledge that there are numerous examples of in-depth development and mixed building lines and orientation in the area however I consider that the cited cases are not directly comparative to the current proposal in terms of the scale, setting, access and context. I do not propose to comment further on this issue as clearly the current application for retention should be determined on its own merits.

7.3.2 The proposal is clearly a backland site to the rear of the applicant's parent's single storey dwelling. The question arises as to whether this amounts to haphazard development that would be out of character with the area and detrimental to the occupiers of nearby dwellings. The dwelling proposed for retention is accessed via the existing driveway and through the curtilage of the established dwelling and is clearly within the backyard. It is in my view entirely unsatisfactory in terms of its siting and access. The dwelling proposed for retention clearly detracts from the residential amenity of the established dwelling and appears entirely haphazard and would set an undesirable precedent for similar such development. The provision of a second dwelling on a restricted land area would be inappropriate and inadvisable from a residential amenity and public health viewpoint. This is explored further in relation to the matter of effluent treatment below.

7.3.3 As regards the design and visual impact of the development I note that the Council's second reasons for refusal considered that the design, timber finish and

prefabricated nature of the dwelling would not integrate with residential development in the area and would not comply with the “Building a House in Rural Kerry – Design Guidelines” 2009. I consider that based on the scale and siting of the structure to the rear of the established dwelling it is not visually prominent and I consider that the visual impact is not a significant issue in this case.

## **7.4 Effluent Treatment**

7.4.1 The dwelling for retention is currently connected to a pre-existing septic tank and soakpit which served the mobile home which had previously occupied the site. The first party within the grounds of appeal has proposed to install a new septic tank and percolation area in the event of permission.

7.4.2 As regards the submitted site suitability assessment I note that in the trial hole excavated to 2.75m neither watertable nor bedrock were encountered. The top soil on site overlies an iron pan encountered c200mm below ground level to a depth of circa 100mm. It is noted that should the iron pan be encountered at a depth greater than 550mm below ground level the entire area of the iron pan will be broken up by excavator prior to installation of the percolation area. The report maintains that a layer of well drained sub soil below the iron pan exists and that the site is suitable for drainage by way of septic tank and percolation area. A T value of 25.81 is recorded.

7.4.3 I have a number of concerns with regard to effluent treatment. The application is deficient in terms of detailing the location of existing septic tanks and wastewater systems or wells serving the established dwellings on adjacent sites. The appeal site directly adjoins the applicant’s parent’s and uncle’s dwelling sites and there is an additional third party dwelling site to the northwest which is not depicted on the submitted site layout plans. None of the treatment systems serving these dwellings are depicted on the submitted plans therefore it is not possible to determine that minimum separation distances in accordance with the EPA Wastewater Treatment Manuals can be achieved. Furthermore, the proposal would clearly result in the

subdivision of the applicant's parent's dwelling site leaving inadequate curtilage in terms of minimum site area required for a dwelling served by a septic tank. (A minimum site area of .2ha is specified within the development plan). Based on the details submitted it is evident that the proposal would result in a concentration of effluent treatment systems taken together with those used in the surrounding area would be prejudicial to public health.

## **7.5 Appropriate Assessment Screening.**

7.5.1 The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section. A screening report for Appropriate Assessment was not submitted with this appeal case therefore the screening assessment has been carried out de novo.

7.5.2 The subject site is located on an established rural dwelling site at its closest 30m west of the designated area of two Natura 2000 Sites namely Castlemaine Harbour SPA Site Code 004029 and Castlemaine Harbour SAC Site Code 000343. (I note that the dwelling for retention is located in excess of 100m from the designated sites) A number of other European sites within a possible zone of influence (Iveragh Peninsula SPA, Dingle Peninsula SPA, Lough Yganavan & Lough Nambrackdarrig SAC, Killarney National Park McGillicuddy Reeks & Caragh River Catchment SAC, Slieve Mish Mountains SAC Tralee Bay Complex SPA, Mount Brandon SAC, Tralee Bay and Magharees Peninsula West to Cloghane SAC) have been considered but were screened out on the basis of the absence of possible source pathway receptor, due to distance and the lack of any relevant ex-situ factors of significance to the relevant species.

7.5.3 The proposed development comprises the retention of a dwellinghouse on an established rural dwelling site currently connected to a pre-existing septic tank and permission to provide a new septic tank and percolation area<sup>1</sup>. Having regard to

- The small scale and domestic nature of the development
- Location on an established dwelling site
- The very weak and indirect ecological pathway to the European sites and the absence of potential for habitat disturbance or loss

It is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.5.4 The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the Project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on Castlemaine Harbour SPA (Site Code 004029) or Castlemaine Harbour SAC (Site Code 000343) or any other European site in view of the site's Conservation Objectives and Appropriate Assessment and submission of an NIS is not therefore required.

## 8.0 Recommendation

I have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission be refused for the following reasons and considerations.

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<sup>1</sup> Proposal to provide a new septic tank and percolation area was included within the amended proposal provided within the grounds of appeal.

## Reasons and Considerations.

1. Having regard to the appeal site configuration and pattern of development in the area the proposal to retain the dwelling would constitute haphazard backland development that would affect the character and appearance of the area and the amenities of nearby properties. The proposed development would be contrary to the proper planning and sustainable development of the area.
2. Having regard the nature of the site as a subdivision of a dwelling site and to the density of houses served by individual wastewater treatment systems in the immediate vicinity, the Board is not satisfied, based on the details provided, that all the required minimum separation distances from domestic waste water treatment systems can be met in accordance with the requirements of the Environmental Protection Agency | Code of Practice : Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ ), March 2021, and that the site can be adequately drained. It is considered that the proposed development would result in a proliferation of wastewater treatment systems in close proximity which would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector  
14<sup>th</sup> December 2021