



An
Bord
Pleanála

Inspector's Report ABP 311378-21

Development	Demolish existing dwelling and garage and construct replacement dwelling.
Location	Tomies East, Beaufort, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21/711
Applicants	Tara Duggan & Brian Doherty
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	(1) Katherine Cremin (2) James Cremin
Observer(s)	None
Date of Site Inspection	24/11/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.170 hectares, is in the townland of Tomies East accessed c. 3km to the south-east of Beaufort and c.12km to the west of Killarney. It is accessed via a private track off a minor local road. The track also provides access to a single storey dwelling and agricultural buildings c.500 metres to the north of the appeal site. A new road off the local road providing access to Tomies Wood to the south is to the west of the private track.

The site is roughly rectangular in shape on which there is an existing three bedroom, single storey dwelling with a detached garage. The side and rear boundaries are delineated by post and mesh fencing with the front boundary to the access track delineated by a hedge. The site has views of Lough Leane to the east and Tomies Mountain to the west/south-west.

2.0 Proposed Development

Permission is sought to demolish the existing dwelling and detached garage (stated floor area of 154 sq.m.) and its replacement with a single storey dwelling with a stated floor area of 213 sq.m.

The split block, narrow gable dwelling is to have a ridge height of 5.868 metres with external finishes comprising of corrugated metal roof cladding and natural stone.

A new effluent treatment system with sand polishing filter is proposed to replace the existing septic tank. No bedrock or water was encountered in the trial hole. A T value of 42.69 was recorded.

Water supply is proposed from the existing well on site.

The application is accompanied by a Visual Structural Report of the existing dwelling. It is stated to have been constructed in the 1970s as a council cottage. It concludes that following the length of time during which damp and mould have affected the house, it is not certain that it will be possible to take remedial action. Demolition and reconstruction would be more cost effective and less time consuming.

Unsolicited further information in response to the objections received was submitted to the planning authority on the 18/08/21.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 13 conditions including:-

Condition 3: Occupancy clause

Condition 4: Dwelling to be primary, permanent all year round private residence. It shall not be used as a holiday or second home.

Condition 5: External finishes requirements. White uPVC windows, doors, fascias, soffits and guttering not to be used.

Condition 6: Exclusion of exempted development provisions save with a prior grant of permission.

Condition 8: Site landscaping.

Condition 9: Competent person to carry out review to determine presence of asbestos containing material. Report on same and proposed management to be submitted.

Condition 10: Waste management and disposal plan for demolition and excavation waste to be prepared.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report dated 19/08/21 (countersigned) notes:

- The proposed dwelling will not be visually obtrusive.
- The house has been designed in line with the principles set out in the Design Guidelines 'Building a House in Rural Kerry'.

- Due to the location of the development it can be easily absorbed into the existing landscape and will not alter its character to an unacceptable degree.
- The proposal would not be contrary to the overarching objectives outlined in the development plan to protect the sensitive landscape identified under the Prime Special Amenity Zone.
- A condition requiring the dwelling to be used as the applicants' permanent residence in accordance with section 3.3.5 of the plan recommended.

A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Biodiversity Officer in a report dated 20/07/21 considers that having regard to the nature, scale and location of the proposed development the proposal, individually or in-combination with other plans or projects, is not likely to have significant effects on European Sites in view of their conservation objectives. An AA is not required.

Site Assessment Unit in a report dated 17/08/21 has no objection to the proposed effluent treatment system subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to size and design of replacement dwelling, need for replacement dwelling, visual impact, effluent disposal, surface water disposal and accuracy of plans and details.

4.0 Planning History

The planning history on the site is set out in the Visual Structural Report accompanying the application and in the Planner's report on file. The most recent permission for a sunroom and stone cladding to the dwelling dates back to 2000.

5.0 Policy Context

5.1. Kerry County Development Plan 2015

The site is within an area designated as Prime Special Amenity.

Section 12.2.1 – Prime Special Amenity areas are those landscapes which are very sensitive and have little or no capacity to accommodate development. In these areas all development will be prohibited other than exempted development in accordance with Schedule 2 of the Planning and Development Regulations 2001-2007.

Section 3.3.5 Renovation and Restoration of Existing and Vacant Buildings Situated in Rural Areas.

Replacement of an existing dwelling house will be considered where the renovation or restoration of the building is not feasible for structural reasons. The Planning Authority will require a Structural Engineers Report to support this position.

In Prime Special Amenity Areas, the renovation or restoration will be confined to dwellings which are to be occupied by a person as their primary place of residence and who are sons and daughters of traditional landholders, the landholding having been in the applicant's or applicant's family's ownership for a period in excess of ten years while being the location of the principal family residence.

Objective RS-16 - Give favourable consideration to applications for the conversion and reuse of existing traditional farm buildings or rural houses. These properties should be structurally intact and exhibit essential physical characteristics of a dwelling house.

Objective RS-17 - Resist the demolition and replacement of traditional or vernacular rural housing, whose character merits retention.

5.2. Natural Heritage Designations

Killarney Park SPA (site code 004038) and Killarney National Park, Macgilllycuddy's Reeks and Caragh River Catchment SAC (site code 00365) are immediately to the south of the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Katherine Cremin

The submission can be summarised as follows:

- The applicants do not meet the rural settlement location policy for the area.
- The site is on top of a hill. The dwelling is bigger and higher than that existing. The existing garage cannot be seen from the lake. The new build is double the length of that existing. The design and external finishes are inappropriate. It cannot be easily absorbed into the existing landscape. It would be visually obtrusive.
- Renovation rather than demolition is feasible. No structural reasons for its demolition have been provided which is required with reference to development plan criteria. It would set an undesirable precedent.
- Leaving the route and level of pipe network to be determined at construction stage is inappropriate. It would have a negative impact on adjoining lands and a watercourse. Groundwater flows directly to Lough Leane.
- Proposed perimeter drains are a source of water pollution. The site is higher than adjoining lands.
- There is serious concern about waste water contaminating lower lands.
- There is an open drain directly south of the site that flows into a small stream. Further detail is needed on measures to be taken during construction to ensure no runoff, silt etc. enters the drain.
- The site appears to straddle two ground water body areas, Laune Muckross and Cahersiveen. Laune Muckross is classed by the EPA as 'at risk' and the risk to the Cahersiveen ground water body is under review.
- Further information is needed on proposed protection measures for the existing well on site particularly during construction.

- Assessment of cumulative impacts of wastewater treatment systems in the area requires evaluation.
- The site adjoins Killarney National Park which is a Biosphere Reserve. All planning objectives must be applied to protect against risk of pollution.
- Assessment needs to be submitted to avoid negative impact on the ecology of European Sites. No AA Screening report or NIS accompany the application.
- Fencing is proposed over the site boundary.
- It should have been noted that Japanese Knotweed, rhododendron and fuchsia are on the site.

The appeal submission also raises concerns as to treatment of submissions on the planning file, accuracy of the plans and details accompanying the application, site visit by council planner and removal of mature trees.

6.1.2. **James Cremin**

6.1.3. The submission can be summarised as follows:

- The applicants are not from the area and do not meet the development plan's rural housing criteria.
- The site is on top of an exposed hilltop. The existing dwelling is smaller in scale. The proposed dwelling does not attempt to fit in to its surroundings and will be visually obtrusive. The dwelling is visible from the newly opened road to Tomies Wood to the west.
- No case has been made for use of modern internal or external insulation materials to upgrade the existing dwelling.
- The new dwelling cannot comply with a condition attached to the original permission that it be a defined distance from the boundaries.
- The financial contribution sought by way of condition is too little in view of interference with adjoining farmlands and roads. The rubble and invasive species if not contained during transport from the site would cost the County Council much more to resolve.

- There are concerns regarding surface water runoff and effluent disposal. The extent of the eastern site boundary is queried.
- Future permission will be sought for a garage.
- Light spill cannot be subdued, absorbed or contained within the site.
- The landscaping proposals are inappropriate. Japanese knotweed is on the site.

The appeal submission give details as to the history of the site.

6.2. Applicant Response

The response by Simply Architecture, which is accompanied by a submission by the applicant, can be summarised as follows:

- The County Development Plan states that the replacement of existing dwellings will be considered where the renovation or restoration is not feasible for structural reasons. A Structural Engineer's report accompanies the application as required.
- The applicants recently vacated the dwelling as it is unsafe and unhealthy for a young family to live in. They are eligible to live at this location.
- The proposed dwelling has been designed in accordance with best practice design guides for a rural dwelling. There are several design and material references used in the dwelling that are influenced heavily by rural typology and, therefore, ensure the house is very well integrated in its surroundings.
- The materials proposed are in line with best practice guidelines including 'Building a House in Rural Kerry'. There is no suggestion that the source of the natural stone will not be local.
- The scale and form is well managed and carefully considered. It has a traditional pitched roof with narrow gables. It is designed in two blocks to break down the scale of the house and ensure the visual impact is minimised.
- The house is not proposed on higher ground than the existing dwelling.

- While the height of the dwelling is greater than that existing this is solely due to the fact that the roof pitch is amended to fit more appropriately with traditional rural dwellings and in line with best practice rural design characteristics. The existing dwelling has a lower roof pitch which is not appropriate to a countryside setting and is associated more with a suburban type dwelling. Thus, whilst the ridge is slightly higher the overall scale, form and design is more appropriate to the rural setting.
- The use of glazing in the design is in line with passive house principles and the requirement for the house to benefit from solar gain. The window sizes and positions are finely balanced and carefully considered. There is already some significantly sized glazing on the existing house.
- A detailed landscape plan has been submitted with the application. This was acceptable to the planner and biodiversity officer.
- A detailed soil test report and associated engineering drawings were submitted with the application. The biodiversity officer noted that there is a low risk of a pollution event to the nearest waterbody which is a considerable distance away. It will be an improvement on the existing environmental conditions.
- The site boundaries in the application correspond with the boundaries recorded with Land Registry.
- The site is not within a SAC. As per the biodiversity officer's report the proposal is not likely to have a significant effect on the conservation objectives of the nearby European Sites.

The submission also responds to issues as to treatment of submissions on the planning file, site inspection by council planner, removal of mature trees and accuracy of the plans and details accompanying the application.

6.3. Planning Authority Response

None

6.4. **Observations**

None

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with development plan rural housing criteria
- Design of dwelling and visual impact
- Site servicing
- Other Issues
- Appropriate Assessment

7.1. **Compliance with development plan rural housing criteria**

The site is within an area designated as being of Prime Special Amenity in the current Kerry County Development Plan. Such designated areas comprise of landscapes which are very sensitive and have little or no capacity to accommodate development. In these areas all development is prohibited other than exempted development in accordance with Schedule 2 of the Planning and Development Regulations 2001-2007.

There is an existing dwelling and detached garage on the site and, whilst currently vacant, appears to be in a habitable condition. The dwelling is generic in design with a north – south axis thereby availing of views of Lough Leane to the east and Tomies mountain to the west. As per the appeal response the applicants have been resident in the dwelling since 2013 but vacated it during the summer on the grounds of its condition and unsuitability for occupation with their new-born child.

The development plan allows for the replacement of an existing dwelling where the renovation or restoration of the building is not feasible for structural reasons. As required the application is accompanied by a Structural Engineer's report which concludes that following the length of time during which damp and mould have affected the house it is not certain that it will be possible to take remedial action. Demolition and reconstruction is considered to be more cost effective and less time

consuming. Certainly the dwelling, of itself, is not of a design quality or merit to warrant its protection and, therefore, the provisions of objective RS-17 which seeks to resist the demolition and replacement of traditional or vernacular rural housing, whose character merits retention would not be applicable.

In Prime Special Amenity Areas, the renovation or restoration and, by inference, replacement where structurally not feasible to retain, is confined to dwellings which are the primary place of residence of the occupants. This appears to be the case in this instance although it is not entirely clear whether the property has been in the applicants' ownership for a period of in excess of 10 years. From the details provided they have lived in the house for 8 years. Notwithstanding, I consider that the substance of the development plan requirements appear to have been met in this case and note the obligations in terms of occupancy which can be appropriately addressed by way of condition. Notwithstanding, the acceptability or otherwise of the proposed development is predicated on other design and environmental considerations being met.

7.2. Design of Dwelling and Visual Impact

As noted above the existing dwelling on the site served by a detached garage is of a generic design. It is so sited to avail of the views both to the east and west. The replacement dwelling is contemporary in execution, and whilst providing for a greater floor area and footprint than that existing, entails a narrow form in two blocks which assists in breaking down its scale and bulk. The ridge height at 5.868 metres is higher than that existing at 4.8 metres but allows for a roof profile which more appropriately reflects that of traditional vernacular building. A limited palette of external finishes are proposed including corrugated metal roof cladding and natural stone and, subject to carefully selection in terms of source and colour, are acceptable. Whilst glazing is proposed in the eastern elevation to maximise views of Lough Leane, I would concur with the agent for the applicants that the window sizes and positions are balanced in terms of the building design and are acceptable. As noted, the existing dwelling has extensive glazing on its eastern elevation.

In summary I consider that the replacement dwelling accords with the principles of design as set out in the 'Building a House in Rural Kerry' guidance document. I consider that the replacement dwelling will not have a greater visual impact or be

materially more obtrusive than the existing dwelling when viewed from the east or from the new access road to Tomies Wood to the west. A landscaping plan accompanies the application. I recommend that this should be supplemented by a requirement to incorporate a continuous hedge of indigenous species along the eastern site boundary to further assist in its assimilation into the landscape.

7.3. Site Servicing

The existing dwelling is served by a septic tank and it is not known whether it is served by a percolation area. Its replacement with an effluent treatment system and polishing filter is proposed with the site characterisation form confirming the site's suitability. A distance of 38 metres is to be maintained to the existing well serving the site with the necessary setbacks to be maintained to the site boundaries in accordance with the parameters set out in Table 6.2 of the EPA Code of Practice for Domestic Waste Water Treatment Systems. Its installation including the associated pipe network will be required to be certified by the system manufacturer. A condition to this effect can be attached should permission be granted.

In view of the distance to the nearest dwellings to the north-east and north (c.300 and 500 metres respectively) I do not consider that the issue of density of septic tanks is a material concern.

I submit that the proposal will present an improvement on the existing situation on site and would not give rise to risk of pollution to adjoining lands, watercourses or groundwater.

7.4. Other Issues

Appropriate measures will be required to be employed during the construction phase to ensure that adjoining lands are not impacted in terms of runoff. A condition requiring the preparation of a construction management plan could be attached should the Board be disposed to a favourable decision.

Issues of removal of existing planting on the site is not a matter for comment by the Board. The applicant will be required to ensure that appropriate measures are carried out to prevent the spread of invasive species.

The Kerry County Council Development Contribution Scheme 2017, as adopted, sets out the applicable rates for a dwelling. The planning authority is required to properly apply the scheme and has no discretion as to the amount to be attached.

Issues with respect to interference with documentation on the planning file is a matter more appropriately addressed to the planning authority.

7.5. Appropriate Assessment – Screening

Compliance with Article 6(3) of the Habitats Directive

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.

The application is not accompanied by a Screening for Appropriate Assessment report.

Screening for Appropriate Assessment - Test of likely significant effects

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

Demolition of existing dwelling and construction of a replacement dwelling.
Decommissioning and removal of existing septic tank and its replacement with an effluent treatment system.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

Construction Phase:

- Surface water run-off from the site that contains silt, sediments and/or other pollutants impacting water quality in downstream Natura 2000 sites.
- Disturbance/displacement of qualifying interests.

Operational Phase:

- Surface water run-off from the site that contains silt, sediments and/or other pollutants impacting water quality in the downstream Natura 2000 site.
- Disturbance/displacement of qualifying interests.

Submissions and Observations

The appellants state that an assessment needs to be submitted to avoid negative impact on the ecology of European Sites.

European Sites

The development site is not located in or immediately adjacent to a European site. The closest European sites are Killarney Park SPA (site code 004038) and Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365) immediately to the south of the site.

Identification of Likely Effects

- The proposal does not constitute the development of a greenfield site. There is an existing habitable dwelling served by a septic tank on site which are to be replaced.
- A road to Tomies Wood is immediately to the west along which there is frequent vehicular and pedestrian movements.
- The measures required to be employed at demolition and construction stage would be standard practices and would be required in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.
- The control measures to be undertaken during the operational phase are standard practices in order to protect local receiving waters, irrespective of

any potential hydrological connection to Natura 2000 sites. Surface water run-off will be accommodated within the site.

- The decommissioning of the existing septic tank and its replacement with a waste water treatment system with raised polishing filter will provide for an improvement in terms of effluent disposal on the site.
- The site does not support habitats of ex-situ ecological value for qualifying interest species of the SPA within the zone of influence.

In terms of cumulative impacts I am not aware of any proposals for development in the vicinity of the site.

Mitigation Measures

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.

Screening Determination

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 proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 004038 and 00365 or any other European site, in view of the sites' Conservation Objectives and Appropriate Assessment (and submission of a NIS) is not therefore required.

This determination is based on the existing pattern of development on the site and the nature and extent of the development proposed to replace the existing dwelling and septic tank.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the existing dwelling and septic tank on the site and to the nature and extent of the proposed replacement dwelling and effluent treatment system, it is considered that the proposed development would not adversely impact on the visual amenities of the area or of property in the vicinity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance 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 authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicants, members of the applicants' immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicants. Prior to commencement of development, the applicants shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicants shall submit to the planning authority a written statement of

confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

3. Samples of the external finishes shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

5. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. No surface water shall discharge onto adjoining lands

Reason: To ensure adequate servicing of the development, and to prevent pollution.

6. (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.

- (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.
- (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.
- (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.
- (e) Within three months of the first occupation of the dwelling, 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 and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

7. The landscaping scheme shown on drawing no. 020-13-100 as submitted to the planning authority on the 28th day of June 2021 shall be carried out within the first planting season following substantial completion of external construction works.

In addition to the proposals in the submitted scheme a continuous hedge of indigenous species (eg. holly, hawthorn or beech) shall be planted for the full length of the eastern site boundary.

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.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

9. The developer shall pay to the planning authority a financial contribution 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 the 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

Pauline Fitzpatrick
Senior Planning Inspector

December, 2021