



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312066

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<b>Development</b>	Construction of bungalow, new entrance, wastewater treatment system and ancillary works
<b>Location</b>	Leampreaghane, Kilflynn, Tralee, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	21660
<b>Applicants</b>	Paddy and Jennifer Boyle
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Laura Twomey
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> July 2022.
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site of .3 hectares located in a rural area roughly mid-way between Listowel town (c.12.5km away) and Tralee(c.14km away). The site fronts a local secondary road L-6075 road at a distance of 850m north of its junction with the N69 at Leampreaghane. It is in the second cluster of one-off houses north of this junction. The site has frontage of about 37m and is flanked on each side by a dwelling. The dwelling to the south is parallel to the road although the road is of a curved alignment whereas the house to the north is at an angle to the road but is consistent with the orientation of the house to the south. The curved horizontal alignment restricts visibility along the road in the vicinity of the site and between the site and the N69.
- 1.2. The site is partly fenced along the boundary with the adjacent properties which together form part of a larger field. The surrounding area is predominantly agricultural land with a significant amount of one-off housing.
- 1.3. The original hedgerow roadside boundary has been removed although the site is overgrown. There is a dry ditch/drain and agricultural entrance on the site frontage. The site slopes down in a northerly direction with the adjacent dwellings at higher and lower levels respectively.

## 2.0 Proposed Development

- 2.1. The application involves permission for the construction of a 163 sq.m. dwelling house and wastewater treatment system with soil polishing filter. Mains water connection is proposed.
- 2.2. The proposed dwelling is single storey and is roughly rectangular in shape with the narrow end fronting the road. The main entrance door is centred in the northern elevation - i.e. the side elevation facing onto the neighbouring rear garden/bungalow to the north. It is to be set back at a distance of c.40m-50m from the existing front roadside boundary and the front building line is some 10m further back from the rear building line of the dwelling to the north.
- 2.3. The application is accompanied by a site characterisation form and in this the site is recorded as having a T test result of 31(min/25mm) and P Test result of 17

(min/25mm) indicating that the site is suitable for onsite wastewater treatment with discharge to ground. The site is identified as being in an area classed as LI - locally important aquifer- Bedrock which is moderately productive only in local zones.

- 2.4. In further information (26th August 2021) the applicant has submitted maps identifying the family home of one of the applicants in Beechwood estate in Listowel and the other in Banemore on the N69 c. 8km south of Listowel where the applicants are currently residing. It is explained that they wish to be able to care for parents in Banemore.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Kerry County Council by order dated 12<sup>th</sup> October 2021 decided to grant permission following the submission of further information as requested by order on 11<sup>th</sup> August and 21<sup>st</sup> September 2021. This was subject to 14 conditions.

- Condition 3 restricts occupancy (section 47 agreement also required)
- Condition 5 (d) no uPVC externally
- Condition 6 revised building line to 6m forward and ffl. to be 300mm lower than shown on site layout map.
- Condition 13 requires front boundary to be set back in line with drawing lodged 7<sup>th</sup> October
- Condition 15 requires landscaping to be in accordance with details lodged 7<sup>th</sup> October among other specifications regarding time and species.

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

- 3.2.1. Planning Report: This report notes the development plan objectives and that the site is in the least sensitive of areas in terms of landscape character and visual amenity. The guidance for rural development as set out in chapter 3 of Development Plan, is cited, notably objective RS1-5 inclusive. No AA or EIA issues arise. Objections are noted as are the contents of the technical reports which includes a request for further information, and this was sought in respect of:

- Sightlines

- Consent for works outside the site
- Social ties to the area
- Orientation of the dwelling

3.2.2. On review of the further information the local connections of one the applicants is accepted as complying with the rural settlement criteria. The landscaping details are considered insufficient as are the details in respect of sightlines. Clarification of information as sought is requested.

3.2.3. In a letter submitted 7/10/2021 from the applicant's agent, Des O'Sullivan architectural building technician, states:

- A shared entrance is not possible
- Revised landscaping plan submitted
- 'with regard to sightlines, Mr. Slattery says that the proposed entrance has sufficient sightlines in both directions'

3.2.4. In the PA's review of the further information there are no further substantive issues raised regarding visual impact, road safety, drainage or residential amenity and outstanding matters are addressed in conditions of permission.

3.2.5. Other Technical Reports

- Roads report: The initial report required FI regarding sightlines in both direction with the local secondary road L-6075. It is noted that the previous permission provided for a shared access arrangement. It states 'In relation to sightlines the junction with the public road it appears that the sightlines to the south do not meet the required distances. The applicant must show clearly on a map the available sight distances in both directions form the junction of the access road with the local secondary road L06075). This measurement must be taken form a point 2.4m back from the edge of the public road and the sight line must be measured to the inside edge of the road.....If sightlines not achievable... but sightlines relevant to the ambient speed on the road are available a report from a suitably qualified person with professional indemnity insurance... must be submitted.' This was not addressed in the initial response to further information. '...available sightlines at the junction with the public road has not adequately addressed the lack of visibility to the south in particular

- The final report of 3<sup>rd</sup> November 2021 states recommends a grant of permission subject to 7 conditions relating to the detailed nature of the works. in event of permission.
- SAU: No objection subject conditions Correct design PE assumptions and the effluent treatment system proposed is adequately sized to cater for the anticipated load of PE6.
- County Archaeologist: N/A erroneously on file

### 3.3. Prescribed Bodies

Irish Water: No objection

### 3.4. Third Party Observations

- 3.4.1. One objection lodged by the appellant: The grounds relate to loss of privacy, and impact generally on landscape having regard to topography and height and exposed nature of site in the context of chapter 13 criteria as cited.
- 3.4.2. A letter of support was submitted by MJ Healy-Rae TD.

## 4.0 Planning History

- 4.1 PA reg 03/3087 and 04/1461 refers to previous permission for a dwelling on the site.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Kerry County Development Plan 2015-2021 remains the operative development plan until 28<sup>th</sup> November 2022 pending adoption of the current Draft Plan 2022-2028.
- 5.1.2. Settlement strategy is supported by objective in section 3.4:

Urban Settlement Strategy Aim: To support and enhance the role of towns, to protect their diversity, economic vitality and environmental attributes, which are important for the identity and distinctiveness of towns. To create quality urban places

where people want to live, work, visit and socialise, by applying the principles of urban design to the planning and management of urban areas

5.1.3. **Rural Housing policy:** The site in accordance with Map 3.1 falls within a **stronger rural area** which is described as 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. Stronger 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

5.1.4. The following policies are relevant to areas under urban influence.

- **RS-7** Ensure that favourable consideration is given to individual one – off house developments for immediate family members (sons, daughters or favoured niece/nephew) on family farms and land holdings; subject to compliance with normal planning criteria and environmental protection considerations
- **RS-9** Facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages.

## 5.2. Listowel Municipal Local Area Plan 2020-26

5.2.1. The vision for Listowel is to maximise its growth in population and services to a level that will encourage the development of a vibrant regional town, while maintaining and enhancing its physical assets, unique character and natural attributes. In order to allow Listowel to develop in an orderly manner, important strategic issues are, inter alia, that:

- Listowel is promoted as a regional town and every effort is made to achieve its population target as per the core strategy.

5.2.2. The Listowel environs are identified as being under pressure from urban generated housing. To address this sufficient land has been zoned for residential use within the town development boundary to cater for the existing and future residential needs of the population of the town.

- Objective LS-RT-01 seeks to Ensure that Listowel, as a regional town, is a driver of county and regional prosperity by harnessing its strategic location and position in North Kerry; its strong urban structure, existing tourism, retail, service and accommodation base; and other competitive advantages.
- Objective LS-RT-02 seeks to Promote a vibrant, culturally-rich and revitalised town centre with enhanced social inclusion, sustainable neighbourhoods and a high level of environmental quality to ensure an excellent quality of life for all.

### 5.3. **Draft Kerry County Development Plan 2022-2028**

5.3.1. Section 5.5 refers to rural housing. The site is in an area classed as rural area under urban influence. While the plan is not adopted it provides an up-to-date description of the spatial and social distribution of housing units and the consequences having regard to national policy considerations.

'... (59%) have taken place outside of the County's urban areas including small Towns and Villages and consist of private housing. By comparison a significant portion of the development undertaken within the county's towns and villages comprises social housing (either direct build or turnkey).

This pattern of development contributes to a spatial and social imbalance and the decline in population of smaller settlements. As a result, many key services have closed, in part due to population decline and dropping income levels leaving more marginalised and vulnerable citizens without access to those services.

In order to address the socio-economic imbalance of our settlements, to retain existing and sustain new services and facilities in small villages, to reduce car dependency and meet the county's obligations to mitigate climate change, it is essential that a balance be struck between facilitating people with an economic or social need to live in the rural area while ensuring that other housing demand is facilitated and encouraged within Towns and Villages.

The policy for single housing in the countryside in this Draft Plan has been guided by national and regional policy.

It is the policy of the Council to:

- Enhance the vitality and viability of the rural towns and villages, to strengthen their role as rural service centres and protect existing community uses and services in the villages
- Maintain a stable population base in the rural areas with a strong network of rural service centres in villages and small towns
- Sustainably provide cluster developments within (small) villages at a density that reflects the existing footprint of the settlement
- Protect sensitive landscapes and other environmentally sensitive areas from unsustainable development

It is the policy of the Council to ensure that future housing in rural areas complies with all National Policy documents including the National Planning Framework (NPO 15 & 19), the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (DoEHLG), RSES and Circular PL 2/2017 and this will be achieved through greater emphasis on the following:

- a. Establishing that there is a genuine economic or social need for permanent occupation.
- b. Prioritising the reduction of residential vacancy rates in all the Rural Areas in preference to new residential development.
- c. The renovation or modification of existing structures in rural areas for residential use.
- d. Encouraging people who wish to reside in the countryside to live in existing villages or small village settlements where there are services available.

5.3.2. The Draft plan is subject of a ministerial Directive regarding Wind energy which effectively seeks the reinstatement of the wind energy areas / map. In this map the subject site falls within a potential wind energy area.

#### 5.4. **National Planning Framework (February 2018),**

5.4.1. National Policy Objective 19 relates to rural housing and seeks to 'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:



- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements,'

#### **5.5. Other official housing data:**

- 5.5.1. The GIS map viewer indicated unfinished housing developments in both Tralee and Listowel.

#### **5.6. Natural Heritage Designations**

- 5.6.1. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) is 700m to the south of the site - on southern side of the N69.
- 5.6.2. The site is 100m from a drain /watercourse that feeds into a tributary of the River Brick which is in turn a tributary of the Lower Shannon SAC c. 5.2km downstream from the drain.

#### **5.7. EIA Screening**

- 5.7.1. The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a single new dwelling and associated site works, the absence of features of ecological importance within the site, I consider that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A third-party appeal has been lodged by Michael Casey and associates on behalf of the owner of the neighbouring dwelling against the decision to grant permission. The grounds are based on the following:

- Overlooking : The site layout and design will give rise to overlooking and loss of amenity as depicted in the montage of the house on page 1 .
- Both siting and design are contrary to the design guidance for rural housing due to the elevated and exposed nature of the site and lack of integration with the natural and built environment. (Appendix E of submission).
- No boundary screening to the north. The house faces north-east with gable end fronting the road.
- The applicant does not yet own the site and it is submitted it is misleading and that the applicant has not demonstrated a strong rural link.
- Proposal does not comply with Sustainable Rural Housing Guidelines for Planning Authorities 2005 DoEHLG.
- No Protection for seepage downhill into appellant's property.
- Visual impact is not acceptable in context of policy guidelines e.g. objective RS2 and How to Build a House' guide in the CDP 2015-2021.
- The basis of 'feeling' is not adequate justification by the planning authority.
- The relocation by 6m forward will result in overshadowing.
- The site is located on a bend in the road with restricted sightlines.
- No objection in principle if the above site layout issues are addressed.

6.1.2. The Appeal is accompanied by a photomontage development plan extracts and file documentation.

### 6.2. Applicant' response

- Strong rural links
- Design is appropriate to an infill site and typical of the area.

- 13m set back from north boundary and landscaping will protect amenity. The condition requiring stepping forward and lowering of ground further protects amenities.
- No surprise that a house will be constructed due to planning history.
- Notwithstanding previous permission, the Appellant has not provided any screening.
- Seepage of water: It is explained the wastewater system will be designed in accordance with the EPA Code of Practice. However, it is pointed out that as the appellant to the north has dug down as part of their site works they have a responsibility to manage natural run off.
- Sightlines are adequate – 80km/hr speed limit. Actual speed is lower and it is a quiet road.

### 6.3. Planning Authority Response

6.3.1. No specific comment on appeal grounds .

## 7.0 Assessment

### 7.1. Issues

7.1.1. Having read the contents of the file and inspected the site I consider the key issues relate to:

- Rural Housing need
- Siting and design and impact on residential amenities
- Traffic safety
- Drainage
- Appropriate Assessment is also a mandatory consideration.

### 7.3 Rural Housing Need

7.1.2. Kerry County Council in its Development Plan (Section 3.3.1), while recognising the tradition of dispersed settlement, highlights that the scale of dispersed rural housing is unsustainable and uneconomical in terms of infrastructure provision and quality of life. Objective RS-1 seeks to ensure that future housing in all rural areas complies

with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 and the development guidance document of the development plan.

- 7.1.3. The draft plan, while not adopted provides an up-to-date description of the spatial and social distribution of housing units and the consequences; ‘... (59%) have taken place outside of the County’s urban areas including small Towns and Villages and consist of private housing. By comparison, a significant portion of the development undertaken within the county’s towns and villages comprises social housing.’
- 7.1.4. In the current plan the site location is classed as ‘stronger rural’ but in the draft plan it is described as being under urban influence. The facts are that the site is in a rural area lacking wastewater facilities and is car dependant. Listowel where the applicant’s have social ties is a designated growth area with unfinished housing development. I note from the submitted registry map by the planning authority that pressure for one-off housing development is evident in the area. On the basis of the pattern of development and circumstances the site in an area that is, what I would class as, being under urban influence. It accordingly falls under the category as rural area under urban influence.
- 7.1.5. Policy Objective 19 of the National Planning Framework seeks to ensure that, in providing for the development of rural housing, a distinction is made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.1.6. In this case, the applicants state that the site is near where they work but this is not stated and while the family connections are not in doubt, they do not have a demonstrable rural housing need to the extent that is justifiable on the basis of its potential to undermine a more balanced housing pattern in line with the settlement hierarchy that is sustainable in terms of infrastructure and car dependency. I say this having particular regard to the key objectives for the nearer town of Listowel. I also note that notwithstanding the location of one of the family homes in an urban area

and one in a rural area along the N69 that the proposed dwelling location will rely on car-based trips for visiting both - being 4.5m from the rural based parents and 12km from the urban based family home.

- 7.1.7. Permission for a new rural house in such circumstances would service to contribute to a pattern of development that would be highly car dependant and would also undermine the policy of the planning authority to direct development into serviced areas and more specifically would conflict with the strategic aims for Listowel town and Tralee and a sequential approach to developing serviced and sustainable neighbourhoods .
- 7.1.8. Accordingly, I consider the reference to lack of demonstrating a strong rural link is valid. A grant of permission would therefore conflict with Policy Objective 19 of the National Planning Framework, would undermine rural housing policy as set out in the current Kerry County Development Plan in its adherence to Sustainable Rural Housing Guidelines. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- 7.1.9. I further note that the site is located in an area that is potentially within a wind catchment area and permitting one-off housing may compromise the strategic provision of a national resource. However as this matter is still pending adoption following a ministerial direction on this matter, I consider refusal on this basis is premature. If the Board is of mind to include this as a reason for refusal it would constitute a new issue.

## **7.2. Siting and Design**

- 7.2.1. The main concern by the appellant relates to the proposed house design and layout and how it impacts on the appellant's dwelling to the north.
- 7.2.2. The proposed dwelling is on an elevated site relative to that of the appellant's and while single storey in height, the principal façade, with the main entrance and living/habitable rooms, faces onto the side boundary at a point where it is to the rear of the appellant's property at right angles. The potential for overlooking and loss of privacy and, I would add, potential for disturbance, is aggravated by the fact that there is an absence of screening . The applicant has submitted what is described as a landscape plan with further details in further information and this is further augmented by a condition of permission.

7.2.3. While in an urban situation, the juxta positioning of two single storey dwellings could be accommodated by screen walls in addition to landscaping, in this case the extent of such works to achieve screening is somewhat excessive particularly when the underlying issue could be more easily remedied by a more considered design approach appropriate to its context. I do not agree that t bringing forward of the building line adequately addresses the integration of the dwelling with the existing site and context. The proposed development by reason of its siting and design would I consider seriously injure the residential amenities of the adjacent property to the north. Accordingly I consider permission should be refused on this basis.

### 7.3. **Sightlines.**

7.3.1. The application includes a drawing demonstrating available sightlines but this is not accepted by the roads division and further information was requested. A map of the sightlines was required together with an explanation by a competent person with indemnity insurance justifying the reduced distance. No further map was submitted and an agent, Des O'Sullivan simply states that Mr Slattery confirms availability of sightlines.

7.3.2. I note from the drawing lodged (June 2021) that sightlines are restricted by the curved alignment of the road and that the full distance as plotted relies on an area of ground beyond the metalled edge of the carriageway, hence prompting further information. The sightline to the south, where there is a curved horizontal alignment, is of particular concern notwithstanding the reference to ambient speeds and levels of traffic in the appeal response . The final Roads report does not provide any reasoning for its recommendation to grant. Having regard to the alignment of the road and the initial requirements of the Roads Division of the Planning authority, the reliance on sightlines over private property and potential for obstruction, I do not consider the issue of sightlines has been adequately addressed.

### 7.4. **Drainage**

7.4.1. The appellant is concerned about the potential for seepage of wastewater from the site into the lower-level site – belonging to the appellant. However it is pointed out that as the appellant to the north has dug down as part of their site works, they have a responsibility to manage the impact of such works on natural run off. I consider this is reasonable. the applicant however has duty to protect water quality while taking account of the natural slope. The site characteristic form demonstrates that the site

has the capacity to accommodate a treatment system designed to filter and treat effluent for PE of 6 and that the discharge can be acceptable limits on the basis of the EPA Code of Practice. there is a wider issue of the concentration of independent wastewater systems which is more appropriately addressed in sustainable settlement strategy.

## **7.5 Appropriate Assessment**

- 7.4.2. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) is 700m to the south of the site - on southern side of the N69. The site is 100m from a drain /watercourse that feeds into a tributary of the River Brick which is in turn a tributary of the Lower Shannon SAC c. 5.2km downstream from the drain.
- 7.4.3. Having regard to the nature and scale of the proposed development, connectivity to the Lower River Shannon would be restricted to hydrological pathways. However, I consider that having regard to the nature of the proposed development and separation the nearest European site, absence of a direct pathway connecting the subject site to the SPA, the nature of the immediate receiving environment (i.e. predominantly agricultural) and no direct discharge to any surface waterbody that no Appropriate Assessment issues arise and it is not considered that the 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**

- 8.1 I recommend that permission be refused based on the following reasons and considerations.

### **Reasons and Considerations**

1. Having regard to –
  - (i) National Policy Objective 19 of the National Planning Framework (February 2018), which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration

of demonstrable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements,

- (ii) the pattern of development in the area which is considered to be under urban influence
- (iii) The objectives of the Kerry County Development Plan, 2015 to 2021 and the Listowel Municipal District Local Area Plan 2020-2026 which seek to discourage urban generated housing in rural areas and to direct the provision for housing into towns and villages such as Listowel.

it is considered that the applicants have not sufficiently demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with National Policy Objective 19. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that, by reason of siting and design relative to the adjacent dwelling to the north, the proposed dwelling house would be visually obtrusive and overbearing in nature and would seriously injure the residential amenities of the adjacent dwelling. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. Having regard to the horizontal alignment of the road onto which the domestic entrance is proposed, it is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted.

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Suzanne Kehely  
Senior Planning Inspector

19<sup>th</sup> November 2022