



An
Bord
Pleanála

Inspector's Report ABP.308787-20

Development	Construction of a dwelling house, private garage, wastewater treatment system and polishing filter
Location	Killoe, Caherciveen, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/823
Applicant(s)	Muiris Brennan
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third Party
Appellant(s)	Michael & Joan O'Shea Denis Lyons
Observer(s)	Brendan O Caoimh
Date of Site Inspection	8 th June 2021
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.1. The site is located in the townland of Killoe, approx. 5km to the south of Caherciveen and is approx. 2km to the east of the national secondary road, N70 (Ring of Kerry). It is a rural area which is predominantly in agricultural use but there are a number of single houses and farmhouses scattered around the countryside in the vicinity. The site is accessed by means of a network of local roads and a private access track. There is an existing dwelling house (referred to as family home in submitted drawings) to the east of the access track and a further dwelling house located immediately to the southwest of the appeal site (stated to be in the ownership of one of the appellants). The access track is approx. 188m in length and terminates at two stone sheds, which are in a derelict condition. The lands on the eastern side of the track are undeveloped. A drain flows down the eastern side of the access track for a distance of approx. 110m and is then piped under the local road.
- 1.1.2. The site area is given as 0.29ha. The site forms part of a larger field and is roughly rectangular in shape. It is in an elevated position overlooking the agricultural lands to the south and west. The site is laid in grass and slopes from north to south. One of the derelict sheds is located within the site, and the other one is located immediately to the south-east adjoining the access track. The sheds are single storey and constructed of stone. The access track currently has a 'dog-leg' adjacent to the sheds and continues past the site along the eastern boundary. There is a stand of trees which runs along the southern boundary of the site which separates the site of the proposed dwelling from the ruinous buildings. The south-western section of the site (containing one of the sheds) is bounded by an existing hedgerow with a line of trees and borders the appellant's dormer dwelling to the southwest.

2.0 Proposed Development

- 2.1.1. It is proposed to erect a dormer dwelling on the northern section of the site together with a detached garage in the north-western corner. It is also proposed to alter and upgrade the existing access road leading to the site with a stone chip finish. The proposed entrance to the site would be located between the two ruinous sheds leading to a driveway. Although the description of the proposed development does not specifically mention demolition, it is proposed to demolish the shed in the south-

western corner of the site. The floor area of the proposed house is given as 215m² and the ridge height as 7m, and the garage would be 37m². A small balcony is proposed on the eastern side elevation.

- 2.1.2. The site layout plan shows a proposed wastewater treatment plant located to the south-west of the proposed house with a percolation area and polishing filter. Soakaways are proposed to the south-west of the proposed dwelling, in the south-eastern corner and adjacent to the eastern boundary. A private well is proposed, which is sited in the north-eastern corner of the site, behind the proposed dwelling. Landscaping proposals include the retention of hedgerows and tree lines and the planting of a landscaped mound with planting on the southern boundary adjacent to the appellant's property, as well as a row of Ash and Alder trees along the western and northern boundaries. Fuscia hedging is also proposed.
- 2.1.3. Unsolicited further information was submitted to the P.A. on 16th October 2020 which mainly addresses the objections received by the P.A. and provides further justification for the proposed dwelling house at this location and for the design and layout proposed.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 17 no. conditions, the most relevant of which may be summarised as follows:

Condition 2: Development contribution €33,000.

Condition 3: Occupancy condition.

Condition 4: Permanent occupancy and no use as a holiday/second home.

Condition 11: Vehicular access and works to access road as submitted drawings.

Condition 12: No water to flow onto neighbouring sites/public road but shall be collected and diverted to discharge to existing watercourse or soakpit.

Condition 17: Use of garage restricted to domestic purposes.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report noted the location of the site in a **Stronger Rural Area** and in an area designated as **Rural General**. It was further noted that a previous application for a similar development was appealed to the Board following a decision to grant, but the application was withdrawn prior to determination by the Board in 2020 (305985). Third party objections were noted and taken into consideration.

No concerns were raised in respect of the proposed wastewater discharge proposals, surface water discharge proposals, or residential amenity. The Area Planner was satisfied that the applicant had demonstrated adequate occupancy/intrinsic ties to the area. It was considered that EIA was not required given the nature, scale and location of the project. Appropriate Assessment Screening was carried out and it was concluded that there is no likely potential for significant effects to Natura 2000 sites. Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

Environment – The Site Assessment Unit considered that the proposal to provide a proprietary treatment system and final polishing filter was acceptable. No objection subject to conditions.

3.3. Prescribed Bodies

Irish Water – No objection. It was noted that the applicant does not propose to connect to public mains.

3.4. Third Party Observations

Objections were received from two neighbouring landowners. The concerns raised are similar to those raised in the third-party grounds of appeal. In brief, they related to the following matters:

- Contrary to rural settlement policy
- Impact on visual amenity and character of area, excessive height, bulk, scale

- Impact on residential amenity, overlooking, proximity to dwelling to SW
- Prejudicial to public health, effluent not adequately disposed of on site
- Surface water drainage inadequate
- Traffic hazard, inadequate sightlines

4.0 Planning History

ABP.305985 (PA 19/230) –decision to grant planning permission for a single dwelling on site was subject to a third-party appeal, but application was withdrawn prior to determination by the Board. This proposal had sought permission for a 2-storey house with a stated floor area of 189m² and ridge height of 7.742m.

5.0 Policy Context

5.1. National Planning Framework

National Policy Objective 15 seeks to manage the growth of areas under strong urban influence to avoid over-development.

National Policy Objective 19 makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs.

5.3. Development Plan

Kerry County Development Plan 2015-2021

In terms of Rural Settlement Policy, (3.3), the site is located in a **Stronger Rural Area** which is described as one where population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. The key challenge is stated to be to strike a balance between residential development in the towns/villages and in the rural areas.

Objectives RS1-RS6, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

There are two further objectives which relate specifically to Stronger Rural Areas, namely, **RS-10** which seeks to facilitate the provision of dwellings for people who are intrinsic to the area and **RS-11** which seeks to consolidate/sustain the stability of the rural population and to provide a balance between development activity in urban areas and villages and the wider rural area.

Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Rural General Area**, which are described as constituting the least sensitive landscapes which can accommodate a moderate amount of development, without significantly altering its character. This is described as an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to RGAs. These include a requirement for dwellings to be integrated into the landscape. Policy objectives ZL-1 and ZL-4 apply which seek to protect the landscape of the County as a major economic asset and invaluable amenity and to regulate residential development in Rural Areas in accordance with zoned designations and the Settlement Policy set out in Section 3.3

5.4. Natural Heritage Designations

The site is located within 6km of four European sites, as follows

- Valencia Harbour and Portmagee Channel SAC (Site code 002262) - c.3km to the west
- Iveragh Peninsula SPA (Site code 004154), c.4km to northwest; and
- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) – c.6km to north
- Ballinskelligs Bay and Inny Estuary SAC (Site Code 000335) - c.6km to south

6.0 The Appeal

6.1. Grounds of Appeal

The 2 no. third party appeals were submitted by Denis Lyons and Michael & Joan O'Shea. The main points raised may be summarised as follows:

1. Rural settlement policy

- The policy for the area, including the NPF (Obj. 19), the Sustainable Rural Housing Guidelines and the CDP policies for a Stronger Rural Area, requires that a balance be struck between development activity in urban areas and the wider rural area in order to sustain and consolidate the stability of population. Given the proximity of the site to Caherciveen and the viability of such rural towns, the proposed development would run counter to the national and local policies and guidance.
- Notwithstanding the applicant's rural links with the area, it is disputed that the applicant has a rural housing need to live at this location. He is a block-layer who works in south Kerry which is a big area. His housing need could therefore be met in a smaller town or village. It is asserted that he currently rents a property outside of the Killoe area.
- The proposal would contribute to further sporadic rural development in the area and would have an adverse effect on the preservation of the rural

environment and the efficient provision of public services and infrastructure and it would impact on the viability of smaller towns and villages.

- The site is not in the applicant's immediate family ownership. Part of the site is owned by his parents and the majority of the site is owned by his uncle. Permission was previously granted for a house on the applicant's uncle's landholding in 2018 (17/1155).

2. Visual Amenity

- The proposed development would constitute haphazard backland development on an elevated and exposed site, behind the existing building line. It would therefore interfere with the character of the landscape which it is an objective to preserve.
- The height, bulk and design of the proposed dwelling in this exposed location would be visually obtrusive, would fail to be absorbed or integrate into the landscape and would seriously injure the visual amenities of the area. It would therefore be contrary to Objective ZL-1 of the CDP.
- The proposal would constitute an excessive density of development in the rural landscape. It would fail to form a cluster. Existing dwellings in the area are set back an appropriate distance from the public road, recessed accordingly, are parallel to the public road and do not break the building line. Similar proposals have been refused in the vicinity in the past on these grounds. Reference is made to P.A. Reg. Ref. 07/475, 07/2057 and 07/4041.

3. Residential amenity

- Proximity to house to south-west – the proposed dwelling would be too close to appellants' house to SW. As the site is elevated, it would be overbearing and give rise to overlooking.
- It is claimed that the house is located at the point marked 'X' on the submitted photo. It is disputed that it would be at the point marked by a tick. The proposed mound with planting to prevent overlooking would break the existing building line and would look out of place within the landscape.

4. Traffic and Transport

- Substandard road - The local road is relatively well trafficked given the extent of local housing. The speed limit is 80kph, but the ambient speed limit is 60-70kph. It is substandard in terms of width and alignment and the additional turning movements generated by the development will endanger public safety by reason of traffic hazard. The proposal would therefore interfere with the free flow of traffic and obstruct other road users.
- Inadequate sightlines at entrance - Sightlines at the junction of the farm track and the public road are inadequate and the proposed development will therefore give rise to a traffic hazard. In particular, the sight distance to the east is hindered by vegetation, which had been cut back when the applicant's photos were taken and over which the applicant has no control. The access track is barely 3m wide and no splayed walls or gate pillars have been proposed. There is another entrance to an existing house just 3-4 metres from the junction with the access track. The additional traffic would give rise to a traffic hazard.
- Inadequate access to dwelling – the access track is 200m in length and is outside of the applicant's ownership. It serves a farm-holding, and the width is insufficient to allow two-way traffic. There is an open drain/stream running alongside the eastern edge of the track. The access to the site is inadequate as it is substandard, abuts an open drain and is unsuitable for combined residential/agricultural traffic.

5. Inadequate drainage proposals

- The site is elevated and in times of heavy rain, surface water from the site flows directly into the appellants' property to the SW. The proposed development will exacerbate this situation. The unsolicited FI, which stated that this surface water arises from the appellants' own site is disputed. The surface water from their land is diverted to a river whereas the water from the appeal site flows directly onto their property.
- The percolation area for the proposed WWTP is directly behind the house to the SW. As the surface water flows into the appellants' property, the effluent will also overflow onto their site which will endanger public health.

6.2. Observations on grounds of appeal

An observation was submitted on 6th January 2021 from Brendan O’Caoimh. The observation is in support of the planning application, and it is requested that the Board upholds the P.A. decision to grant permission. It is pointed out that the site is located within the West Iveragh LAP where there is a need for demographic strengthening. Although Killoe is just outside the Gaeltacht area, there is a recognised need to attract young families to the area. The access is considered to be adequate, and the proposed dwelling would be easily absorbed into the landscape. The applicant is considered to have a social and economic need to live in the area. Given the pressure on the local rental market, long-term renting is not economically sustainable in a tourist area such as this.

6.3. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

6.4. First party response to the Grounds of Appeal

A response was submitted from the first party on 23rd December 2020. There are detailed drone photographs and a 3D photomontage included with the response which illustrate the proposed development in the context of the surrounding properties and lands. Additional information is also provided in terms of a detailed survey of the entrance from the public road, and a series of letters in support of the application which will be discussed in the assessment section of this report.

The response is mainly in the form of a rebuttal but makes the following relevant points

- The siting and design of the dwelling is entirely in accordance with the policy objectives of the CDP, - RS-1, RS-2 and RS-4 and it has been designed specifically to comply with the guidance in the Rural Design Guide (KCC). It is disputed that the site is ‘elevated’ or that it would be visually obtrusive. It is reiterated that it would form part of an existing cluster.
- Detailed personal information has been provided regarding the bona fides of the applicant in terms of his housing need. Reference is also made to his

relationship to one of the appellants. It is clarified that the applicant is living in rental accommodation which is unsustainable and that he and his partner and child wish to live in close proximity to his ageing parents. It is submitted that the proposal fully complies with RS-10 and RS-11. Letters of support from various members of the community are provided including letters from the applicant's employer, the parents' doctor, school principals etc.

- It is pointed out that the proposed development utilises an existing entrance, as recommended in the guidelines, and that this entrance has more than adequate sightlines. The view to the east from the entrance is owned by Danny Lyons who has given his consent to cut back vegetation in the event that visibility in this direction becomes a problem in the future. The driveway is also adequate for two cars to pass, and the owners of the access have given consent for the application.
- The surface water on the site will be managed and controlled to protect the applicant's property and will also protect the appellants' property. The direction of the surface water flow from the appeal site is not towards the appellants' site but is towards a drain to the east of the site. It is submitted that the surface water flow experienced by the appellants comes from lands to the north and west of their property. It is stated that the applicant will install all necessary drainage to avoid any surface water flowing into their property.
- The distance between the proposed dwelling and the appellant's dwelling is 68 metres and the area in between will be screened by landscaping and tree planting. The house has been redesigned from that previously granted by the P.A. with a reduction in scale and height.

6.5. Further responses from appellants to first party response to grounds

A further detailed response was submitted by each of the Third-Party Appellants and by the Observer in support of the application. The submissions refuted many of the points made in the response to the grounds of appeal. These included matters such as whether the site is elevated or not and whether the design is appropriate, whether the applicant has a genuine housing need to live at this location, whether there are any alternative sites for sale in the townland of Killoe and the appropriateness of the

drainage and access proposals. It is considered that no new material planning issues were raised.

The Board should note, however, that the submissions on file indicate that the first party is related to one of the appellants (Denis Lyons) and that they contain information and documentation which relates to personal circumstances and relationships, land ownership and past disputes, which I consider to be immaterial to the planning merits of the case. I have not, therefore, included these comments in my summation of the submissions. However, the documentation is on the file for the Board to review.

7.0 Assessment

7.1.1. It is considered that the main issues arising from the appeal are as follows: -

- Rural settlement policy
- Visual amenity
- Residential amenity
- Adequacy of drainage proposals
- Traffic and Transport
- Environmental impact assessment
- Appropriate assessment

7.2. Rural settlement policy

7.2.1. National guidance as set out in the NPF and in the Sustainable Rural Housing Guidelines emphasise 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. The site is located in a rural area which is in a relatively remote part of the county and is not in a coastal location. Although it is located just 5km from Caherciveen, it could not be described as one which is under intense pressure for urban generated housing. Notwithstanding this, there is a reasonable presence of one-off housing in the general area.

- 7.2.2. The site is located in a Stronger Rural Area as set out in the current Kerry CDP, which is 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. 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. It is also located in an area designated as a Rural General Amenity Area, which relates to the least sensitive landscapes with a moderate assimilative capacity for development. The level of development is also regulated by settlement policies in accordance with Section 3.3.1, Table 3.7 and Objectives RS1-RS-4 of the Development Plan. The applicant must demonstrate that the proposed dwelling shall be used as a permanent place of residence.
- 7.2.3. The submissions in relation to the application and appeal set out the applicants' circumstances. The site currently forms part of two landholdings, with one part being owned by the applicant's parents and the other by his uncle and is being gifted to the applicant. He had previously lived with his parents, but as he and his partner have recently had a baby, they are now living in rented accommodation in Caherciveen. He is employed in the construction industry and works as a block layer for a local employer, who has written a letter in support of the application. It is stated that the site is ideally located for the catchment area of the business and as the applicant would be expected to store items relating to the job from time to time. Documentation has also been provided which demonstrates that the applicant grew up in Killoe and went to school in the local area, and in addition, that his parents are aging and that he wants to reside close by to be in a position to look after them. Letters from his parents and their GP have been provided to support this.
- 7.2.4. The policy for a Stronger Rural Area, which is less stringent than that for a Rural Area Under Urban Influence, requires a proof that the applicant is intrinsic to the local area. I would accept that there is sufficient evidence to demonstrate that the applicant is an intrinsic part of the community in which he was raised. I would further accept that the applicant has a rural generated housing need for a house at this location in view of his family circumstances and his employment which is based in the locality. It is noted that the applicants agree to the conditions restricting occupancy and permanent residence as opposed to a holiday home.

7.3. Visual amenity

- 7.3.1. The Rural General Amenity Area is one that is the least sensitive landscapes, which has the ability to absorb a moderate amount of development without significantly altering its character. The proposed development should, therefore, be capable of being successfully integrated into the landscape and should not be unduly obtrusive in their siting and design.
- 7.3.2. There is some dispute between the parties as to whether the site is elevated or not, whether it would form part of a cluster or represent haphazard development and whether it would be visually obtrusive. The site is situated in the foothills of a range of mountains and is elevated above the level of the public road. It is not, however, a particularly prominent site, as it is reasonably well screened by means of vegetation. There are several houses at a higher elevation to the northwest and several houses at a similar elevation as well in the general vicinity. Some concern had been expressed that it would be set back 'behind the building line', but this is not particularly relevant in a rural context. It is considered that the more important criteria are whether it would form part of a cluster and would be easily absorbed into the landscape. It is noted that there is a grouping of dwelling houses which are set back a similar distance from the road, which could be considered to form a cluster of dwelling houses. It is considered that the proposed development would generally be in accordance with CPD Objective RS-4 which favours development of vacant sites within such a cluster.
- 7.3.3. The applicant claims that the proposed dwelling would not be seen from the Ring of Kerry, that it is well screened and that it is proposed to screen it further with additional hedging and tree planting. I would agree that the site is not visible from the Ring of Kerry and that it is well screened from the surrounding area at present. However, the site is located in an elevated position and the siting and design must ensure that it would be readily absorbed into the landscape. At present, the landscape in the vicinity of the site is dominated by the 2-storey dwelling to the southwest, which is in an exposed and elevated position. Although the appeal site is behind and slightly more elevated than this site, it is significantly better screened by means of vegetation, which it is proposed to retain and enhance. The gradient of the site also slopes from northwest to southeast, with levels shown on the submitted drawings falling from c.21.7m OD in the north-western section to c.20m OD in the

south-east. However, the proposed FFL is +20.75 which fits in well with the spot level to the south-east. The siting and design of the proposed dwelling, with its dormer roof and proposed FFL and ridge level of 27.75m, would therefore be integrated into the contours of the site. Given the high level of existing screening and the proposed additional planting along the southern and western boundaries, it is considered that the proposed dwelling would be designed and sited to minimise visual intrusion and would be readily absorbed into the landscape.

- 7.3.4. It is considered, therefore, that the proposed development would be in accordance with the guidance in the Kerry Rural Design Guide: Building a House in Rural Kerry and with Objective ZL-1 of the Development Plan which seeks to protect the landscape in Rural General Amenity Areas. I would agree with the P.A., therefore, that the proposed development would not constitute a highly visible or obtrusive feature in the landscape and would be acceptable in terms of the visual amenities of the area.

7.4. Residential amenity

- 7.4.1. The appellants to the southwest has expressed concern that the proposed dwelling would be too close to their dwelling, would overlook it and would result in surface water overflowing onto their site. The latter issue will be address in the following section. The applicant has provided drawings and photographs which show that the proposed dwelling would be located c.68m from the appellants' dwelling. As noted in the previous section, there is a high level of vegetative screening along the southern boundary. In addition, the proposed house would be located within a field which is separated from the appellant's site by a further field, both of which are well screened along the boundaries. Given the siting and design of the proposed development, together with the existing and proposed landscape screening, it is considered that the proposed dwelling would not give rise to any significant level of overlooking or loss of privacy. The proposal would not, therefore, result in any significant injury to the residential amenities of neighbouring properties.

7.5. Adequacy of drainage proposals

- 7.5.1. Drainage issues have been raised in respect of both the access track and the site of the proposed dwelling. In terms of the access track, there is an existing open drain which runs alongside the eastern boundary of the lane, and prior to this, it flows

adjacent to the eastern boundary of the site. The applicant's engineer provided details of the drain, which is described as being 700mm wide and 800mm deep. It was stated (letter dated 4th September 2020 submitted with application) that

“The drain is maximum half full [and] therefore 700mm x 400mm available.

Therefore, the existing drain is adequate to cater for the surface water runoff from the existing access road.”

- 7.5.2. The application was also accompanied by a letter from the owner of the access track, Niall Lyons, who stated that he has given permission to the applicant to upgrade the road by re-surfacing it with stone chip and sloping the road so that the surface water will flow into the land drain. He also confirmed that the land drain during and after heavy rain only flows half full. On the basis of the information provided, I would agree that the drain is adequate to accommodate any surface water runoff that would arise along the access track.
- 7.5.3. The appellants to the southwest (Michael and Joan O'Shea) state that the existing surface water flow is such that it results in an overflow during heavy rain directly onto their site. They believe that the proposed percolation area is directly behind their lawn and that increased water and effluent will flow down onto their site, and that it would not be possible to adequately dispose of the effluent within the site. The applicant in response has disputed this on the ground that firstly, the direction of the surface water flow is not towards their site and secondly, that the effluent will be treated by means of a package treatment plant (Tricel P6) and a sand polishing filter. He was of the view that the surface water flow experienced during heavy rain did not arise from his lands but from the lands to the north and west of the appellants' lands. Furthermore, it is stated that all surface water will be directed to existing drains and proposed soakaways within/bordering the site, and that there will be no overflow of surface water onto the appellants' land.
- 7.5.4. The appellants did not accept this. They state that the applicant has put a water drainage pipe down by the western side of his site to eliminate surface water from his site but has not specified where it will be discharged to. In addition, it is stated that the appellants have installed a diversion drain in the field to the north of their house which diverts surface water westwards towards the stream. They believe that it is at this point (junction of applicant's western drain and this diversion drain), that

the water flows down through their site, and that the proposed development will exacerbate the situation.

- 7.5.5. I noted from my site inspection that there is a further drainage ditch which runs E-W along the field boundary within the appeal site, which is just to the north of the two stone outbuilding/ruins. As the gradient slopes towards the eastern boundary, it is assumed that any surface water overflow would be taken along this ditch to the drain alongside the access track and/or to the proposed soakaways within the site. If this does not occur at present, it is considered that the surface water drainage for the site can be designed to ensure that no surface water flows onto the adjoining lands, as required by condition 12 of the P.A. decision.
- 7.5.6. In terms of foul drainage, the application was accompanied by a site suitability assessment which indicated that water was encountered at a depth of 2.4m with a percolation value of 44.92. The proposed dwelling will be served by a bored well which is located a sufficient distance to the north (upslope) of the house, but no details are provided of wells on adjoining sites. The P.A. Environment section considered that the site was suitable for a conventional septic tank with a percolation area and polishing filter. However, the applicant proposed to install a proprietary system, a Tricel P6 WWTP. The proposed system was considered to be adequately sized for a PE of 6. No objections were raised subject to conditions, which included a requirement that it comply with all separation distances listed in Table 6.1 of the EPA Code of Practice Wastewater Treatment and disposal systems Serving Single Houses (pe<10), 2009.
- 7.5.7. It is noted that the proposed treatment system will be installed and certified by a qualified Assessor, as required by the P.A. conditions. Furthermore, after installation, the tank will be certified, and a report sent to the planning authority, and thereafter, will be regularly maintained and serviced to the manufacturer's instructions. It is further noted, from my site inspection, that the field within which the proposed dwelling is to be located appeared to be very well drained at the time of my site inspection.
- 7.5.8. It is considered that having regard to the information submitted with the application regarding the characteristics of the site and design of the proposed treatment system, and to my observations on site, which are generally in accordance with

those described in the SAU report, the proposed wastewater treatment system would be appropriate, subject to standard conditions requiring compliance with EPA requirements. I am satisfied, therefore, on the basis of the submissions made in connection with the application and appeal, that the site can be adequately drained to avoid any adverse impact on adjoining properties and would not be prejudicial to public health.

7.6. Traffic and transport

7.6.1. The appellant states that the road is substandard in width and alignment and that it is relatively well trafficked, and that the additional turning movements generated by the proposed development would give rise to a traffic hazard and would obstruct the free flow of traffic on the road. During my site inspection I observed that the road was very lightly trafficked. Although I would agree that the road is substandard in width, no evidence has been provided to substantiate the claims of a heavily trafficked road. It would be difficult to sustain an objection of the grounds of obstruction of other road users in this instance.

7.6.2. Concerns raised regarding the entrance relate to inadequate sightlines, particularly to the east, the presence of an existing entrance to the west and the failure to provide a recessed entrance with wing walls. The proposed development would be accessed by means of an existing entrance from the public road serving the access track leading to the site, and as such a new entrance with wing walls is unnecessary in this instance. The applicant's engineer (4/9/20) provided the following information regarding the sightlines available at 2.4m back from the road line: -

To the East – the carriageway width of the public road is 3 metres and as the ambient speed on the road would be 60-70kmph, and the sight line along the road would be at least 150m, it would comply with Table 7/1, Section TD 41-42/09 of the DMRB manual.

To the West – the public road carriageway is 3 metres wide. The sightline available would be at least 150m. As the ambient speed is 60-70kmph, this would comply with the DMRB standard.

7.6.3. I note that the sightlines to the west are facilitated by the recessed boundary and entrance to the adjoining site (parents' site). The appellant considers that the applicant does not have the permission of the landowner to the east to maintain the

visibility splays in this direction. However, the applicant has provided a letter in response to the grounds of appeal dated 13th December 2020, which specifically states that he has given the applicant “permission to maintain the hedgerow in this area during the Open Season.” I consider that the applicant has given sufficient detail to support his assertion that he has the relevant consent to make the application and to undertake the necessary works. Notwithstanding this, Section 34(13) of the Planning and Development Act 2000 (as amended) states that a person is not entitled solely by reason of a planning permission to carry out any development. The sightlines are considered to be adequate and would not give rise to a traffic hazard.

- 7.6.4. Concerns raised regarding the adequacy of the access track include the unsuitability of the track for combined residential and agricultural use given its narrow width (3m) and the presence of an open drain along the eastern boundary which would prevent two cars from passing. The applicant has addressed this by providing a sketch indicating car passing points. It is considered that the combined use of the track by one dwelling house and one farm-holding is reasonable in terms of the provision of access to the proposed dwelling.

7.7. Environmental Impact Assessment

- 7.7.1. The proposed development is for the construction of a single dwelling house, garage and wastewater treatment system, which will involve tertiary treatment of wastewater, on a greenfield site and for the upgrading of an existing access track. The proposed development is not located adjacent to or hydrologically connected to any environmentally sensitive sites. Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.8. Appropriate Assessment

- 7.8.1. The closest European site is Valentia Harbour and Portmagee Channel SAC (Site Code 002262) site which is located approximately 3km to the west. Other European sites in the vicinity include Iveragh Peninsula SPA (004145) which is approx. 4km to northwest, Killarney National Park, Macgillycuddy Reeks and Caragh Lake

Catchment cSAC (000365), which is approx. 6km to the north and Ballinskelligs Bay and Inny Estuary SAC (000335) which is located approx. 6km to the south.

- 7.8.2. Given the small scale and nature of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment can be ruled out at this stage.

8.0 Recommendation

- 8.1. It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the location of the site within an area designated as a Stronger Rural Area and a Rural General Amenity Area in the current Kerry County Development Plan 2015-2021 and to the rural generated housing need of the applicants for a house at this location, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience 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, as amended by the further plans and particulars submitted to the planning authority on the 16th day of October 2020 and by the further plans and particulars received by An Bord Pleanála on the 23rd of December 2020, 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 development, when completed, shall first be occupied as a place of permanent residence by the applicant, members of the applicant's 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 applicant. Prior to the commencement of development, the applicant shall enter into a written agreement with the planning authority under Section 47 of the Planning and Development Act, 2000, as amended, to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant 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. (a) The external wall finishes of the proposed dwelling house shall have a neutral coloured nap plaster render, using colours such as grey or off-white.
- (b) The roof colour of the proposed dwelling house shall either be black, blue black or slate grey using tiles or slates. The colour of the ridge tiles shall match the colour of the roof.

- (c) White uPVC shall not be used for windows, external doors and rainwater goods.
- (d) Stone work to external walls shall be constructed of natural stone which shall be sourced locally.
- (e) The finished floor level shall be as shown on the submitted drawings.
- (f) The external materials and finishes to the garage shall match the proposed dwelling house.

Reason: In the interest of visual amenity

- 4. The use of the garage shall be restricted to private domestic use only and shall not be used for commercial, habitation or agricultural uses.

Reason: In the interests of residential amenity.

- 5. 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.

- 6.
 - (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 10th of September 2020, 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 dwelling house 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 soakaways 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. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties and shall be collected and diverted to discharge to existing watercourses or to drains or soakpits.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

8. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.

Reason: to ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

9. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. 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.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided 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.

Mary Kennelly
Senior Planning Inspector

18th June 2021