



An
Bord
Pleanála

Inspector's Report ABP-312890-22

Development	Construction of a single storey retirement home.
Location	Dromdoory, Glencar, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	211391
Applicant(s)	Padraig & Breda Breen
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Padraig & Breda Breen
Date of Site Inspection	22 nd June 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area on the Iveragh Peninsula in County Kerry, approximately 6.2km to the southeast of Glenbeigh and 2.7km to the north of Glencar. The general area is accessed via the N70 national road which circles the entire peninsula between Kenmare and Kilorglin. The site is then accessed via a local road off the N70 to the east of Glenbeigh village. This local road is narrow but is wide enough to facilitate passing cars. The River Caragh flows in a northwards direction approximately 30m to the south of the appeal site. There are farm buildings immediately adjacent and to the west of the appeal site. There is a house (applicants' house) approximately 40m to the southeast and another house (applicants' guesthouse) approximately 170m to the west of the appeal site.
- 1.2. The appeal site is stated as 0.375 ha. in area and occupies an area of road frontage which extends to approximately 90m along the southwest and southeast boundaries. There is a low stone wall along this roadside boundary, which is covered in low vegetation (generally bramble). The north-western and north-eastern site boundaries are a mixture of open fields and natural woodland. There are utility poles on the south-western and south-eastern / roadside boundaries, and the line traverses part of the appeal site. The appeal site is relatively flat. The site is poor grassland with reeds and a significant covering of natural woodland.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a retirement house, installation of a domestic wastewater treatment system (DWWTS), a private water supply and associated site development works at Dromdoory, Glencar, County Kerry.
- 2.2. The proposed dwelling is single storey in design with a maximum ridge height of 5.358m, with render finish, some timber panelling and blue / black slates. The proposed dwelling will have an area of 124m². The stone wall along the roadside boundaries is to be retained and there is no treatment specified for the remaining site boundaries.

3.0 Planning Authority Decision

3.1. Decision

By order dated 4th February 2022 Kerry County Council issued a notification of decision to Refuse Permission for the following reasons:

1. On the basis that the applicants own two dwelling houses in the vicinity of the site, the Planning Authority considers that a rural housing need has not been established. The proposed development would contravene Objective RS-1 of the Kerry County Development Plan 2015-2021 to 'Ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG)' and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is located within Kilarney National Park, Macgillycuddy Reeks and Caragh River Catchment cSAC. The proposed development would result in the direct and permanent loss of annexed woodland habitat and would have an adverse effect on the integrity of the designated European site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. Based on the information submitted, the Planning Authority is not satisfied that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer stated that the location of the site is located in an area designated as a Rural Secondary Special Amenity Area and a stronger rural area as per the Kerry County Development Plan, that Objective RS-1 applies and that it was considered that the applicants had not demonstrated compliance with this objective, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is likely potential for significant effects to a Natura 2000 site.

3.2.2. **Other Technical Reports**

Environment Unit – The Environmental report dated 1st February 2022 sought an additional trial hole to be made available for inspection by the planning authority.

Biodiversity Officer – The report dated 27th January 2022 recommends that permission be refused for the proposed development as the proposal will result in the direct and permanent loss of annexed habitat and, therefore, will have a significant adverse effect on the integrity of the European Site.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1.1. There is no planning history on the appeal site referenced in the report of the Planning Officer.

4.1.2. **Adjacent sites:**

P.A. Ref. No.921362 – Padraig & Breda Breen granted permission for a two-storey extension and change of use of dwelling house to guesthouse on a site to the west of the appeal site.

P.A. Ref. No.951416 – Padraig & Breda Breen granted permission for an extension to the guesthouse.

P.A. Ref. No.98704 - Padraig Breen granted permission for a dwelling house on a site to the southeast of the appeal site.

5.0 Policy Context

5.1. National Planning Framework

5.1.1. The NPF in relation to rural housing includes objective 19 which states –

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; and
- 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.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

5.2.1. The Sustainable Rural Housing Guidelines require planning authorities to differentiate between rural housing demand arising from rural housing need and housing demand arising from proximity to cities and towns. Additionally, development plans should distinguish rural areas under strong urban influence, stronger rural areas, structurally weak rural areas and areas with clustered settlement patterns. The guidelines state that development management policy should be tailored to manage housing demand appropriately within these areas.

5.3. Kerry County Development Plan 2022-2028

The Board should note that the Planning Authority carried out their assessment of the proposed development based on the policies and objectives contained in the Kerry County Development Plan 2015-2021. The Kerry County Development Plan 2022-2028 came into effect on 15th August 2022.

5.3.1. The site is located in an area designated as 'Rural Areas under Urban Influence' under Section 5.5 Rural Housing of the Plan. In this regard, **Objective KCDP 5-15** states:

"In Rural Areas under Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

a) Farmers, including their sons and daughters or a favoured niece/nephew where a farmer has no family of their own who wish to build a first home for their permanent residence on the family farm.

b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent residence, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.

c) Other persons working full-time in farming or the marine sector for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent residence.

d) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent residence.

e) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family is both necessary and beneficial in their endeavours to live a full and confident life whilst managing such a condition and can further demonstrate that the requirement to live in such a location will facilitate a necessary process of advanced care planning by the applicants immediate family who reside in close proximity.

Preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.”

- 5.3.2. Section 11.6.3 relates to development in designated landscapes. The site is located within a designated **Visually Sensitive Area - Secondary Special**, which ‘comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation’.

Objective KCDP 11-76:

Have regard to any future National Landscape Character Assessment, Regional Landscape Assessments and Landscape Character Map, and the publication of Section 28 Guidelines on Landscape Character Assessment.

Objective KCDP 11-77:

Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people’s lives.

5.4. Natural Heritage Designations

- 5.4.1. The site is located within Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site code: 000365). The other Natura 2000 sites in proximity to the appeal site include the Iveragh Peninsula SPA (Site code: 004154), c.8km to northwest; Castlemaine Harbour SPA (Site code: 004029), c.8km to northwest; and Castlemaine Harbour SAC (Site code: 000343), c.8km to northwest.

5.5. EIA Screening

Having regard to the nature and scale of the proposed development and separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are submitted by Patrick Griffin MRAI, Letter, Caherciveen, Co. Kerry on behalf of Padraig and Breda Breen and the main points made can be summarised as follows:

- Advises that the single storey dwelling is now a necessity for the applicants due to health reasons.
- Advises that the First Party want to remove themselves from their guesthouse business and that the other dwelling near the site is split-level and entirely unsuitable for an ambulant disabled person (elevation drawings and floor plans of the applicants' split-level house are attached to the appeal).
- States that there is a history of habitation on the site going back to 1846.

6.2. Planning Authority Response

The Planning Authority has not responded to the grounds of the appeal.

7.0 Assessment

I consider that the main issues in the assessment of this appeal are as follows:

- Rural Housing Policy
- Other Issues
- Appropriate Assessment

7.1. Rural Housing Policy

7.1.1. National guidance as set out in the National Planning Framework 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. NPF

Objective 19 also seeks to consolidate development in smaller towns and villages in order to strengthen the viability of such rural settlements.

- 7.1.2. The designation 'Rural Areas under Urban Influence' as set out in the current Kerry County Development Plan 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. 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.' **Objective KCDP 5-15** seeks to facilitate the provision of dwellings for persons who have an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area. The applicant must also demonstrate that the proposed dwelling shall be used as a permanent place of residence.
- 7.1.3. The supplementary information provided by the applicants indicates that they are from the area, are running the guesthouse to the west of the appeal site and reside in a house immediately to the southeast of the appeal site. The First Party's architect has stated that they want to remove themselves from the guesthouse business, possibly let the guesthouse, and that the other dwelling near the site is split-level and entirely unsuitable for an ambulant disabled person. The Board should note, however, that no documentary information has been provided to substantiate the applicants' statement that the additional house is needed on health grounds. Similarly, the applicants have given no reasons why either their existing guesthouse or current residence cannot be adapted to suit their changing needs.
- 7.1.4. The policy outlined in the County Development Plan is clear here and the relevant part (KCDP 5-15 (e)) under this assessment states:
- 'Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family ...'.
- Overall, I agree with the planning authority that the applicants have not adequately demonstrated that they have a need for another rural house at this location.

- 7.1.5. Further to this, an additional house at this location would exacerbate and consolidate the pattern of haphazard rural housing in an unserviced area. At the same time, it would have an adverse impact on the considerable challenges facing rural areas under urban influence to consolidate the growth of small towns and villages in these areas. This would not accord with NPF Objective 19 or local policy both of which require that due consideration is given to the viability of small towns and rural settlements in facilitating the provision of single housing in the countryside. The proposed development should be refused on this basis, as it is not in accordance with the rural settlement policies for the area.

7.2. Other Issues

Design and Layout

- 7.3. As stated earlier in this report, the proposed dwelling is single storey in design with a maximum ridge height of 5.358m, with render finish, some timber panelling and blue / black slates. The proposed dwelling would have an area of 124m². The stone wall along the roadside boundaries is to be retained and there is no treatment specified for the remaining site boundaries.
- 7.3.1. On the day of my site inspection, I observed a mix of house types and designs in the wider rural area around the appeal site. I consider that the proposed house design, which is modest in scale, traditional in form and design, would not form an incongruous feature on this rural landscape and, with the retention of the site boundaries, should sit comfortably on the appeal site. I, therefore, am satisfied that the proposed house would not have any significant adverse visual impact on this rural landscape.

Groundwater

- 7.3.2. Objective NE-26 in the Kerry County Development Plan states that it an objective to 'ensure that all wastewater treatment systems for single dwelling houses are designed and maintained in accordance with the manufacturer's guidelines and the EPA Publication 'Wastewater Treatment Manuals Treatment Systems for single houses' (2009) or any amending/replacement guidance or standards. The 2021 EPA Code of Practice has updated the guidance/standards.

- 7.3.3. Under the Code of Practice, the trial hole should be excavated to a depth of at least 2.1m or to bedrock (or 3m for GWPRs of R2² or higher). I note the results within the Site Characterisation Report stating the groundwater protection response to be R2¹ and the trial hole dug to a depth of 2.4m with the water table present at 1.5m.
- 7.3.4. The First Party proposes to treat the wastewater by means of a secondary treatment system in the form of a mechanical aeration system and discharge to a polishing filter. I also note the report of the Environment Unit, Kerry County Council which states that the Site Assessor recommends a septic tank and percolation area with discharge to groundwater. Consequently, the Environment Unit requested that further information be sought and that a trial hole be opened on the site for their inspection. This did not occur as the proposed development was being refused on other grounds by the planning authority.
- 7.3.5. On the day of my site inspection, I noted that the ground conditions were good and, in my opinion, consistent with those described within the Site Characterisation Form. I am satisfied that the proposals for the treatment and disposal of wastewater conform with the EPA guidance issued under the 2021 Code of Practice. I conclude, based on the material submitted with the application, that the appeal site is suitable for the safe disposal of domestic effluent and with the installation of a proprietary wastewater treatment system, that the proposed development would not create a serious risk of ground water pollution.

7.4. Appropriate Assessment

- 7.4.1. The First Party did not submit an AA Screening or Natura Impact Statement with the application or the appeal. It was noted in a previous section of my report that the site is located within a Natura 2000 site, namely, Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment SAC (Site code: 000365). The Biodiversity Officer, Kerry County Council carried out an AA Screening for the proposed development. This report identified that the proposed development would result in the removal of some woodland area, which is a qualifying interest of the SAC (old sessile oak woods with Ilex and Blechnum in the British Isles) and concluded that this would result in the direct and permanent loss of annexed habitat and, therefore, will have a significant adverse effect on the integrity of the European Site.

7.4.2. The Qualifying Interests of the Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment SAC (Site code: 000365) are as follows:

- Oligotrophic waters containing very few minerals of sandy plains
- Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletae uniflorae* and/or *Isoeto-Nanojuncetea*
- Water courses of plain to montane levels with *Ranunculon fluitantis* and *Callitricho-Batrachion* vegetation
- North Atlantic wet heaths with *Erica tetralix*
- European dry heaths
- Alpine and boreal heaths
- *Juniperis communis* formations on heaths or calcareous grasslands
- Calaminarian grasslands of the *Violetalia calaminariae*
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils
- Blanket bogs
- Depressions on peat substrates of *Rhynchosporion*
- **Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles**
- Alluvial Forests with *Alnus glutinosa* and *Fraxinus excelsior*
- *Taxus baccata* woods of the British Isles
- *Geomalacus Maculosus* (Kerry slug)
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Euphydrias aurinia* (Marsh Fritillary)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra Fluviatilis* (River Lamprey)
- *Salmo salar* (Salmon)
- *Rhinolophus hipposideros* (Lesser Horseshoe Bat)
- *Lutra lutra* (Otter)

- *Trichomanes speciosum* (Killarney Fern)
- *Najas flexilis* (Slender Naiad)
- *Alosa fallax killarnensis* (Killarney Shad)

The conservation objective for this site is to maintain or restore the favourable conservation condition of the habitats and species listed as Special Conservation Interests for this SAC.

- 7.4.3. The other European sites in the vicinity are a minimum of 5km from the site and given the distances involved and the nature and scale of the proposed development, the likelihood of impacts on these sites can be ruled out.
- 7.4.4. The nature of the proposed development is such that it will involve the clearance and excavation of part of the site for the proposed house and percolation area. These works will result in removal of part of a woodland area¹ that is listed as a qualifying interest of the SAC (old sessile oak woods with *Ilex* and *Blechnum* in the British Isles). I am satisfied that this will result in direct and permanent loss of protected habitat and, therefore, would have a significant adverse effect on the integrity of the European Site.
- 7.4.5. On the basis of the information provided with the application and appeal, and in the absence of a NIS, the Board cannot, therefore, be satisfied that the proposed development, individually or in combination with other plans or projects, would not result in adverse effects on the integrity of Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment SAC (Site code: 000365) in view of the sites conservation objectives. In such circumstances, the Board is precluded from granting permission.

8.0 Recommendation

I recommend that permission be refused for the reasons and considerations set out below.

¹ NSNW Site Code:1277, Map 5: Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment SAC (Site code: 000365), National Parks and Wildlife Service – Conservation Objectives Series, October 2017.

9.0 Reasons and Considerations

1. Having regard to:

- the location of the site within a rural area identified as being a rural area under strong urban influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005 and a 'Visually Sensitive Area -Secondary Special' under the Kerry County Development Plan 2022-2028,
- National Policy Objective 19 of the National Planning Framework (February 2018) which 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,
- The provisions of the Kerry County Development Plan 2022-2028 and specifically Objective KCDP 5-15, which facilitates the provision of rural housing for local rural people building in their local rural area, and
- The absence of documentation on the file outlining the applicants' need for another house at this rural location,

the Board could not be satisfied on the basis of the information on the file that the applicants come within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines or the definition of a local rural person in accordance with the relevant criteria of the development plan.

The proposed development, in the absence of any identified locally based need for a house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the

development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would result in the direct and permanent loss of part of a woodland area that is listed as a qualifying interest (old sessile oak woods with Ilex and Blechnum in the British Isles) of a Natura 200 site. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot, therefore, be satisfied that the proposed development, both during construction and operation in combination with other plans or projects, would not result in further adverse effects on the integrity of Killarney National Park, Macgillicuddy Reeks and Caragh Lake Catchment Special Area of Conservation (Site code: 000365) in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

Liam Bowe
Planning Inspector

29th August 2022