



An
Bord
Pleanála

Inspector's Report ABP 314592-22.

Development	House and garage with associated site works.
Location	Clahane, Ballyard, Tralee, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22257
Applicant	Bridget O'Brien
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellants	Der O'Sullivan and David Condon
Observers	None
Date of Site Inspection	3 rd of May 2023
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Clahane, Ballyard, Tralee, Co. Kerry. It is situated approximately 3km south of the town centre of Tralee. The site lies to the east of the Ballyard Road, the L2010. Tralee Rugby Football Club is situated to the east of the appeal site.
- 1.2. The appeal site is roughly rectangular in shape and has a stated area of 0.388 hectares. It comprises the south-western corner of a larger open agricultural field. The site is accessed via a cul-de-sac road off the L2010. The cul-de-sac contains Tralee Rugby Football Club along with eight residential properties. The southern roadside boundary of the site with the road comprises a low timber fence. The northern, eastern and western site boundaries are currently undefined.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling with an on-site effluent treatment system and new vehicular entrance. The proposed dwelling has a dormer design with a ridge height of 7.841m and a floor area of 206.87sq m. A detached garage of 87.98sq m is also proposed.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission for the development subject to 15 no. conditions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Further Information was requested in relation to the following matters.

(1) The application site is located in area designated as Rural Area Under Strong Urban Influence where residential development is restricted to immediate family members on family farms and landholdings as per Objective RS-7 of the County Plan. Any applicant must also demonstrate a need for a dwelling. The applicant is therefore requested to submit details of links and ties to the area, folio details of the length of time the land has been in their ownership, details of current accommodation (e.g. living with parents) etc.

(2) The applicant is requested to address the following issues raised by the Site Assessment Unit:

- The SAU request the applicant to excavate a new trial hole near the proposed polishing filter. The assessor/applicant shall inform the SAU & Planning Authority in writing when the trial hole has been excavated and is available for inspection. To comply with the requirements of the EPA Code of Practice the trial hole should be left open for at least 48 hours prior to inspection. Trial holes are to be left open; covered and fenced off. The SAU will notify the Site Assessor when the inspection has been carried out and trial holes are to be filled following this notice.
- Can the Assessor confirm if the design of the proposed polishing filter allows for the required amount of suitable permeable soil with mottling evident in trial hole at 1.70m BGL.
- Please liaise with Site Assessment Unit prior to submitting the requested information to confirm a date that visual inspection can be carried out on reopened trial hole.

Planning Report: dated 18th August 2022 – In relation to the matter of compliance with rural housing policy the Planning Officer noted that the site is part of a family landholding of 6.39 hectares which has been in the family ownership for over 20 years. Regarding the applicants housing need the response stated that the applicant transferred her former home to her daughter and currently does not have a house. The Planning Officer stated that they were satisfied with the response provided. Regarding the issues concerning the trial hole and proposed polishing filter, it was noted that the Site Assessment Unit inspected the re-opened trial hole and their

report on foot of the further information response recommended a grant of permission. The report of the Planning Officer recommended a grant of permission.

3.2.2. Other Technical Reports

Tralee Municipal District Roads – no issues raised.

Site Assessment Unit, Environment Department: report dated 27/4/2022 – further information required.

Site Assessment Unit, Environment Department: report dated 16/8/2022 – Permission recommended.

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

- 3.4.1. The Planning Authority received one submission/observation in relation to the application. The main issues raised are similar to those set out in the observation to the appeal.

4.0 Planning History

- 4.1.1. Reg. Ref. 982355 – permission was granted for the construction of 8 no. dwellings at Clahane, Ballyard, Tralee.

5.0 Policy Context

5.1. National Policy

- 5.1.1. Sustainable Rural Housing Planning Guidelines DOE 2005

- 5.1.2. The site of the proposed development is located within an area designated as being under strong urban influence. The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Example of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for

persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas.

5.2. National planning Framework (NPF)

5.2.1. National Policy Objective 19

5.2.2. 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:

5.2.3. In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstratable 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 settlement.

5.3. Development Plan

5.3.1. The operative plan is the Kerry County Development Plan 2022 – 2028

5.3.2. It was adopted on the 4th July 2022 and became effective on the 15th August 2022. The Rural Housing policy is set out principally in Chapter 5 of the 2022 Plan, and the Core and Settlement Strategy (Chapter 3). Appendix 8 sets out the Rural Area Types and the data analysis that was used to determine the Rural Area Types. Maps showing the location and extent of the Rural Area Types are provided at Map 5.1 (Chapter 5) and Map 8.8. (Appendix 8).

5.3.3. There are three Rural Area Types which have been identified for the county. This compares with five Rural Area Types in the 2015 Plan. It is stated in Appendix 8 that the identification of the Rural Area Types was based on the analysis of data on population, housing, employment and commuting trends. All data was derived from the Census at Electoral level (1km² grid cells) and has either been compared against previous years or as a percentage of the total. A weighting system has been used in the analysis of the data to determine the characteristics of each area.

5.3.4. The Rural Area Types are

- Rural Areas Under Significant Urban Influence

- Rural Areas Under Urban Influence
- Other Rural Areas

5.3.5. The appeal site at Clahane, Ballyard, Tralee, Co. Kerry is located in Rural Areas Under Significant Urban Influence, the relevant policy for which is: KCDP 5-14

5.3.6. In **Rural Areas under Significant Urban Influence** applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong of life limiting condition) 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 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.

5.4. Natural Heritage Designations

- 5.4.1. There are no European designated sites within the immediate vicinity of the subject site.

5.5. EIA Screening

- 5.5.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental assessment can therefore be excluded at preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by Ger O'Keeffee Consulting Engineers Ltd. on behalf of Der O'Sullivan and David Condon the Trustees of Tralee Rugby Club. The issues raised are as following;

- Condition no. 3 of the permission granted by the Council stated that the proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant.
- Condition no. 4A stated that the use of the proposed dwelling shall be as a primary, permanent all year round private residence.
- In relation to Tralee Rugby Club, it is stated that it is located to the east of the site of the proposed development. There is a substantial amount of activity ongoing in the Club grounds at Clahane, Ballyard.
- It is highlighted that access to Tralee Rugby Club is via a road which is owned by Tralee Rugby Club. The appellants state that they understand that there is

a restricted right of way to the application site which does not allow for the use of the lands for development purposes.

- With reference to the Kerry County Development Plan 2015-2021, in accordance with the section of the plan which refers to housing policy the site is an area which is identified as a rural area which is under strong urban influence where development is permitted in limited circumstances.
- The Planning Authority in their assessment of the application sought further information.
- The site is located in an area designated a Rural Area Under Strong Urban Influence. It is understood that residential development is restricted to immediate family members on family farms and land holdings as per objective RS7 of the County Development Plan.
- It is submitted that this 6.39 hectare land area cannot be classed as a family farm. It is land where there is no farm or house structures. The lands have been sporadically used for grazing purposes over the last number of years. Therefore, it is considered that the applicant does not have adequate ties to a farm holding to farm lands.
- The dwelling is proposed on a limited site within the lands. A farm holding is an agricultural holding which is a single unit both technically and economically operating under a single management which should have at least some farm buildings and also a farm house worked and used by family members.
- The land holding has an area of 6.39 hectares, it is considered that the granting of a dwelling on a small portion of the site could set a precedent for further applications by family members or others in the future. The proposed dwelling is not a farm house which would be located on lands which can be classed as a farm holding.
- In relation to section 3.3.1 of the Kerry County Development Plan 2015-2021 which refers to Rural Area Types it is stated that the appellants do not consider that the site is an area of cluster development and therefore the application is not in accordance with the development plan policies which refer to this.

- It is submitted that the proposed development does not comply with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, 2005.
- The appellants also raised concern in relation to the matter of noise and lighting generated on the Rugby Club lands which could impact on the proposed development. They highlight that the Rugby Club has a licence for dancing and the sale of alcohol and that it provides different types of social activities on an ongoing basis for various age groups. The appellants consider that it would be appropriate that a buffer zone be provided between the Rugby Club lands and any adjacent property.
- A submission on the application file provided by Frank Curren dated 15th July 2022 and received by the Planning Authority on 25th July 2022 states that the applicant Bridget O'Brien currently resides at Coolgarraive, Ballyegan, Ballymacelligott with her family. It is stated in the submission that this house was transferred to her daughter and that Bridget O'Brien does not have a house.
- It is understood that the applicant Bridget O'Brien and her husband Tom O'Brien live at Coolgarraive, Ballyegan, Ballymacelligott and that Bridget O'Brien is employed as a medical doctor.
- The appellants request that the Board refuse permission on the basis that the applicant cannot be considered to come within the qualifying criteria under the provisions of the rural settlement policy in the development plan.
- The site is located in an area designated as under strong urban influence and the permit permission for the proposed dwelling on the site would set a precedent for other development on the remain lands within the landholding.
- There is no reference in the application to the balance of lands being retained for agricultural purposes in the future.

6.2. Applicant Response

A response to the third party appeal was received from Frank Curran Consulting Engineers Ltd. on behalf of the applicant Bridget O'Brien. The issues raised are as follows.

- The O'Brien's own the lands in Folio KY10940F since 2000 which is therefore in excess of 20 years.
- It is submitted that Folio KY10940F would comply as a family landholding as required by policy RS-7 of the County Development Plan.
- The landholding (Folio KY10940F) is used by Bridget and Tom O'Brien for their ponies. It is stated that they are involved in the breeding and training of ponies.
- A letter from Thomas F. O Halloran Solicitors, the solicitor for Bridget and Tom O'Brien has been submitted with the appeal response. The letter confirms that they have a Right of Way on the road which would access the site.
- Regarding the location of Tralee, Rugby Club relative to the application site, it is stated that a buffer zone would not be required in relation to the activities carried out at the rugby club. It is also stated that the applicant would not have sought permission for a dwelling at this location if there was an issue with the location of the Rugby Club.
- The Planning Authority sought further information in relation to compliance with rural housing policy. The applicant Bridget O'Brien clarified her intrinsic links to the Tralee area. Bridget O'Brien and her husband Tom have lived and worked in the Tralee area since 1983.
- It is stated that the proposed development does comply with section 3.3.1.1 of the Kerry County Development Plan 2015-2022 in that the applicant Bridget O'Brien has a housing requirement and the proposed house will improve the quality of their lives.
- It is concluded that Kerry County Council were correct in their decision to grant permission for this development.

6.3. Planning Authority Response

- None received.

7.0 Assessment

The main issues in this appeal are raised in the grounds of the appeals. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Rural Housing policy
- Siting of dwelling and access
- Appropriate Assessment

7.1. Rural Housing policy

- 7.1.1. With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the provisions of the Limerick Development Plan 2022 – 2028, as it relates to settlement in rural areas. The appeal site is located in an area identified as an Area Under Strong Urban Influence on Map No.1 – Indicative Outline of NSS Rural Area Types in the Sustainable Rural Housing Guidelines. These areas are typically close to larger urban centres which are under pressure for housing in the countryside and have road networks which are heavily trafficked. The guidelines suggest that certain classes of persons e.g. those occupied full time or part-time in agriculture, forestry, those who are an intrinsic part of the rural community, sons/daughters of farmers and returning emigrants, may be considered for housing in the countryside.
- 7.1.2. Kerry County Development Plan 2022 – 2028 was adopted on the 4th July 2022 and became effective on the 15th August 2022. The Rural Housing policy is set out principally in Chapter 5 of the 2022 Plan, and the Core and Settlement Strategy (Chapter 3). Appendix 8 sets out the Rural Area Types. Maps showing the location and extent of the Rural Area Types are provided at Map 5.1 (Chapter 5) and Map 8.8. (Appendix 8). The Plan identifies three Rural Area Types for the county. They are Rural Areas Under Significant Urban Influence, Rural Areas Under Urban Influence and Other Rural Areas.

7.1.3. The appeal site is at Clahane, Ballyard, Tralee, Co. Kerry is located within the designation Rural Areas Under Significant Urban Influence. The relevant policy for which is: KCDDP 5-14. In Rural Areas under Significant Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong of life limiting condition) 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 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.

- 7.1.4. The Planning Authority in their assessment of the application sought further information on a number of issues including that the applicant demonstrate compliance with the rural housing policy as per Objective RS-7 as set out in the development plan. The Kerry County Development Plan 2015-2022 was the plan which was operative at the time the Planning Authority made the decision on the application.
- 7.1.5. The response submitted stated that the applicant Bridget O'Brien currently lives at Coolgarrive, Ballyegan, Ballymacelligott. I would note this area is located circa 13km to the east of Tralee and is situated circa 15km from the appeal site at Clahane, Ballyard, Tralee. It is detailed in the response that the applicant Bridget O'Brien has transferred the house to her daughter. The appeal site at Clahane, Ballyard, Tralee is part of a landholding of 6.39 hectares which has been in the applicant's family ownership for over twenty years. It is stated in the first party response that the applicant and her husband use the land for their ponies and that they are involved in the breeding and training of ponies.
- 7.1.6. In relation to the criteria set out under Policy KCDP 5-14 of the Kerry County Development Plan it specifies that applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need. There are four categories under this policy. In relation to the first category (a) it refers to farmers, including their sons and daughters where a farmer wishes to build a first home on the family farm, this category is not applicable to the applicant. In relation to the second category (b) it refers to 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. It is stipulated that proposed dwelling must be associated with the working and active management of the farm. Having regard to the fact that the landholding on which the appeal site is located has an area of 6.39 hectares it is not of a sufficient size to constitute a farm holding to warrant the provision of a farmhouse. Furthermore, on inspection of the site there was no evidence of active farming in operation. I note the reference in the first party response to the fact that the applicant has ponies, however this would not constitute a full time farming use.
- 7.1.7. In relation to the third category (c) it refers to 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. This category is not applicable to the applicant. In relation to the fourth category (d) this refers to 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. Regarding this category I would note that the applicant has not spent a substantial period of their lives living in this rural area as their former home is located at Coolgarrive, Ballyegan, Ballymacelligott which is located circa 15km from the appeal site at Clahane, Ballyard, Tralee. I note that the other criteria as set out under category (d) are not applicable to the applicant.

7.1.8. According, having regard to the details as discussed above, I do not consider that the applicant has demonstrated a rurally generated housing need.

7.1.9. In conclusion, based on the documentation submitted as part of the application and appeal, I am not satisfied that the applicant has demonstrated that they come within the scope of the rural-generated housing need criteria for a house in this rural location, having regard to Policy KCDP 5-14 of the Kerry County Development Plan 2022-2028 which refers to Rural Areas under Significant Urban Influence. Having regard to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, wherein it is indicated that it is policy to distinguish between rural-generated housing need and urban-generated housing need in an area designated as under 'Strong Urban Influence' (such as applies in this instance) it is considered that the proposed development would represent urban-generated rural housing. Furthermore, the proposed development does not comply with National Policy Objective 19 of the National Planning Framework.

7.2. Siting of dwelling and access

7.2.1. The grounds of appeal has raised the matter of the location of the proposed dwelling relative to the location of Tralee Rugby Football Club. They raised concern that the

location of the dwelling would be an issue due to the noise and disturbance which could arise from social functions at the Rugby Club and suggest that a buffer zone be provided.

7.2.2. The proposed dwelling would be sited approximately 75m from the clubhouse which is situated to the south-east. In response to the matter the first party stated that a buffer zone would not be required in relation to the activities carried out at the rugby club. They responded that the applicant would not have sought permission for a dwelling at this location if there was an issue with the location of the Rugby Club. In relation to the separation distance provided between the proposed dwelling and the clubhouse, I am satisfied that it would not unduly impact upon the residential amenities of the proposed dwelling if it were developed at this location.

7.2.3. The grounds of appeal refer to the vehicular access proposed to serve the site which is onto the roadway off the Ballyard Road the L2010. It is stated in the appeal that the appellants understand that there is a restricted right of way to the application site which does not allow for the use of the lands for development purposes. I note that the Right of Way is indicated on the Site Location Map, and it extends along the roadway from the junction with the L2010 to the entrance to the Rugby Club. In response to the matter a letter from Thomas F. O Halloran Solicitors, the solicitor for Bridget and Tom O'Brien has been submitted with the appeal response. The letter confirms that the Right of Way refers to the property Folio KY10840F which the applicant owns. Accordingly, having regard to the letter that the applicant has provided from their solicitor, I am satisfied that they have a Right of Way to access the site as proposed.

7.3. Appropriate Assessment

7.3.1. In relation to Appropriate Assessment, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also 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 is refused for the proposed development.

9.0 Reasons and Considerations

1. Having regard to the location of the site in an unserviced rural area under significant urban influence, and to the documentation submitted with the application and appeal the Board is not satisfied that the applicant has demonstrated compliance with the qualifying criteria for rural housing as per Policy KCDP 5-14 of the Kerry County Development Plan 2022-2028 or the National Policy Objective 19 of the National Planning Framework 2018 and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005, that facilitate the provision of single housing in the countryside, based on the core consideration of demonstratable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. Accordingly, the Board is not satisfied that the applicant has provided sufficient justification for a rural housing need to live in this rural area, or that the applicant's housing need cannot be satisfied in a serviced settlement, particularly in light of the site's proximity to Tralee. In the absence of a sufficient justification, it is considered that the proposed development would contribute to the development of random rural housing in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Siobhan Carroll
Planning Inspector

31st August 2023