



An
Bord
Pleanála

Inspector's Report ABP 315113-22

Development	Construct a dwelling house served by a wastewater treatment unit discharging into a sand polishing filter and associated site works.
Location	Garfinny, Dingle. Co Kerry.
Planning Authority	Kerry Co. Council.
Planning Authority Reg. Ref.	22/932.
Applicant(s)	Mike & Grainne Kennedy.
Type of Application	Permission.
Planning Authority Decision	To Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Mike & Grainne Kennedy.
Observer(s)	None.
Date of Site Inspection	December 15 th , 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in the townland of Garfinny, approximately c 4km to the east of Dingle. Co. Kerry. It is accessed from a local road (L12078) which serves other dwellings and farm holdings in the locality. The area is rural in character and the main land use is agriculture. Residential development is in the form of established clusters with more recent development in ribbon form along the road network. There is a very high concentration of ribbon dwellings on the road to the south that connects directly into the N86.
- 1.2. The site which has a stated area of 0.202ha is rectangular in shape. It is in an elevated position overlooking agricultural lands to the east. Its front boundary with the adjoining local road is formed by a bank and hedgerow. Its northern boundary is formed by the common boundary with the adjoining dormer dwelling and the rear and southern boundaries are undefined. The site forms part of a larger agricultural field and ground levels rise from road level towards the rear of the site.

2.0 Proposed Development

- 2.1. The proposal is to construct a dwelling house on the site. The house would be set back by c 23m from the adjoining local road and against rising ground to the rear. The proposed finished floor level of 36.00m would be achieved by cutting into the hill at the back of the site. The house would have a T- shape configuration and would be a storey and a half in scale. The house would be finished in a smooth render with natural stone on selected elevations.
- 2.2. Foul effluent would be discharged to a sewage treatment system located to the front of the house. It would incorporate a sand polishing filter with discharge to ground. The water supply would be from a public mains supply. The vehicular entrance would be positioned towards the southern end of the site frontage.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the development for the following reason:

- 1. The proposal to locate a dwelling house on this prominent and exposed site would seriously injure the visual amenities of the area by reason of its obtrusiveness. The proposed development would give rise to an extension of undesirable ribbon development in this rural area which would interfere with the character of the landscape which is necessary to preserve in accordance with Objective KCDP 11-78 of the Kerry County Development Plan 2022-2028. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The proposal is for a one-off dwelling house in a rural area within an area designated 'Rural Area Under Significant Urban Influence' and located within the line of Protected Views & Prospects under the current county development plan. The site is prominent and exposed when viewed from the surrounding rural area.

- 3.2.2. There is a very high density of one-off ribbon development which has a high visual impact. It is considered that the proposal would consolidate the existing pattern of ribbon development and have a negative impact on the rural character of the area. The proposal would contravene Objective KCDP11-78 which seeks to protect the landscapes of the County and ensure that development would not detrimentally impact on their character, integrity, distinctiveness or scenic value.

3.2.3. Other Technical Reports

Environment Section: No objection subject to conditions

Uisce Eireann: No objection to the proposal subject to standard requirements regarding connections to networks.

4.0 Submissions

Letters of support were submitted from a number of individuals including local councillors and T.D's

5.0 Planning History

On site

00/339: Outline permission refused for the construction of a single-storey dwelling house and flat on the site.

01/1654: Permission refused for a single-storey dwelling house and septic tank on the site on the grounds that the proposed development would set a precedent for further suburban type development in the immediate area, which would be contrary to the provisions of the development plan, would result in an undesirable density of development and result in an obtrusive feature in the landscape and would be seriously injurious to the visual amenities of the area .

Adjoining site to south

01/1088: Permission refused for the construction of a single-storey dwelling house with septic tank and associated works on family lands.

03/228: Outline permission refused for the construction of a dwelling house with septic tank and associated site works on family lands for 3 no. reasons. It was considered that the proposed development in conjunction with existing and permitted development would set a precedent for further suburban type development in the area, which would be contrary to the policies of the development plan, would result in an undesirable density of development and constitute an obtrusive feature in the landscape which would be seriously injurious to the visual amenities of the area.

To northeast

18/973 – Permission refused for a dwelling house on a site on family lands to the northeast on the grounds that it would be seriously injurious to the visual amenities of the area, would give rise to an extension of ribbon development and interfere with the character of the landscape.

6.0 Policy and Context

6.1. Development Plan

The operative development plan is the **Kerry County Development Plan 2022-2028**, which was adopted on July 4th, 2022 and came into effect on 15th August, 2022. The site lies in a rural area and is unzoned.

6.1.1. Rural housing

Chapter 5 is dedicated to Rural Housing and identifies three different rural area types with objectives aimed at enhancing the vitality and viability of rural towns and villages to strengthen their role as rural service centres while at the same time facilitating those who have an economic or social need to reside in a rural area.

The site is located in a 'Rural Area Under Significant Urban Influence' (Map 5.1 Rural Area Types) and the relevant objective is Objective KCDP 5-14, which sets out the criteria which applicants need to satisfy when seeking to build a house in these areas. Other relevant objectives include the following:

Objective KCDP 5-19: Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county.

Objective KCDP 5-20: Ensure that all permitted residential development in rural areas is for use as a permanent place of residence and subject to the inclusion of an Occupancy Clause for a period of 7 years.

Objective KCDP 5-21: Ensure that all developments are in compliance with normal planning criteria and environmental protection considerations.

Objective KCDP 5-22: Ensure that the design of housing in rural areas comply with Building a house in Rural Kerry Design Guidelines 2009, or any update of the guidelines.

6.1.2. Landscape

Section 11.6 of the plan is dedicated to Landscape. There are two landscape designations for the county which include 'Visually Sensitive Areas' and 'Rural General', with the latter considered to have a higher capacity to absorb development.

The site is located within an area designated 'Rural General' (Map B Landscape Designation). Under the provisions of the plan, it is stated that it is important that development in all areas be integrated into its surroundings and that development outside of designated areas, should, in their designs take account of the topography, vegetation, existing boundaries and features of the area.

Objective KCDP11-78: Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

6.1.3. Views & Prospects

There are protected views and prospects from the N86 towards the site (Map D Volume 4). Relevant objectives include:

Objective KCDP 11-79: Preserve the views and prospects as defined on maps contained in Volume 4.

Objective KCDP 11-81: Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

6.2. National Planning Framework

National Policy Objective 15: Seeks to support the sustainable development of rural areas and to manage the growth of areas under urban influence to avoid over-development.

Policy Objective 19: Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence within the commuter catchment of cities and larger towns and centres of employment, and elsewhere:

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

- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of small towns and rural settlements.*

6.3. Natural Heritage Designations

The closest European site is:

- Dingle Peninsula SPA (Site code:004153) located to the south.

6.4. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impacts assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- Do not agree with the local authority's assertion that the site is exposed and prominent. This is an infill site within an established cluster. The provision of an additional house will have no significant impact on the visual amenities of the area.
- The applicants are an intrinsic part of the local community and wish to build a house on the family farm. They have demonstrated a rural generated housing need. The applicant has a fundamental need to be close to the family farm to provide care and assistance to his parents.
- While the sensitivity of the area is appreciated, the proposed development is in accordance with the Rural Settlement Strategy.

- The house was designed in accordance with the guidelines set out in 'Building a House in Rural Kerry-Design Guide' and its integration into the landscape was a key consideration.
- The central design focus is to keep the design simple to allow the house to integrate seamlessly into its setting. The low ridge house compared with the adjoining dwelling and the use of natural stone on large elements of the front elevation will lessen the impact of the house.
- The roof pitch and height, wall to window ratio, vertical emphasis to gables and design of windows and doors have been achieved using traditional architectural style and the proportions of the dwelling are constant which results in an excellent design solution in terms of the site context.
- The proposal represents a high-quality design solution incorporating characteristics of vernacular architecture within a modern design which complies with the design principles set out in the development plan.
- The proposed house, due to its infill location, form, layout and character could not reasonably be determined to constitute a development that would result in any significant adverse visual impact to warrant a refusal of permission by Kerry Co. Council.
- The applicants are happy to undertake any revisions to the proposal considered necessary by the Board to integrate the development into its setting. Extensive landscaping is proposed, and the boundaries will be planted with screen planting.
- The development is located in an area designated 'Rural General', which is the least sensitive landscaped in the county and has the ability to absorb development.

7.2. Planning Authority Response

- The proposed site is highly prominent and exposed when viewed from the surrounding rural area along the N86 (photo attached).

- The proposed development would consolidate the existing pattern of ribbon development in the area, impacting negatively on the character of the scenic rural landscape.
- The site is within the line of the Protected Views & Prospects from the N86 national secondary road.
- There have been two previous refusals of permission for development on this site and on a plot downhill (Reg Ref No 18/973)
- The hillside nature of the landscape means that the pattern of ribbon development has a high visual impact. The proposal would set an undesirable precedent for similar development in the vicinity.

8.0 **Assessment**

8.1. **Introduction**

Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

I consider that the main issues that arise for determination by the Board in relation to this appeal relates to the following:

- Principle of the Development/ Rural Settlement Strategy
- Impact on the visual amenities of the area
- Other matters
- Appropriate Assessment

8.2. **Principle of the Development/ Rural Settlement Strategy**

8.2.1. It is applicants' contention that the proposal is wholly in accordance with the Rural Settlement Strategy and that they have demonstrated a need to live in this rural area.

8.2.2. The proposal is to build a house in a '*Rural Area Under Significant Urban Influence*', as defined in the development plan. These are areas which exhibit characteristics such as proximity to the immediate environs or close commuting catchment of the

larger towns and villages, rapidly rising population and evidence of considerable pressure for development.

- 8.2.3. Objective KCDP 5-14 of the development applies to these areas. In order to be considered for a house, the applicants must demonstrate that the proposal constitutes an exceptional rural generated housing need based on their social and/or economic links to a local area. They must satisfy one of 4 No.categories of housing need set out in Objective KCDP 5-14.
- 8.2.4. The site is located within lands that are in family ownership for generations and the applicant's father has given him consent to apply for planning permission. The applicant was born and raised on the farm and now works part time helping his father on the farm. The applicants are currently in rented accommodation and are stated to have moved four times in 11 years as the houses they were renting were put on the market.
- 8.2.5. On the basis of the information submitted in support of the application, it would appear that the applicant meets the criteria set out in Objective KCDP5-14 (a) being the son of a farmer who wishes to build a first home for their permanent residence on the family farm. However, consideration must also be given to whether the proposal constitutes an exceptional or demonstrable rural generated housing need based on economic and/or social links to a particular area as required by Objective KCDP-14 of the development plan and Policy Objective 19 of the NPF.
- 8.2.6. One of the applicant's (Mike Kennedy) is stated to be self-employed (Auctioneer) and works part time on the family farm. It is clear therefore that the applicant does not rely solely on the farm for employment, and on that basis it is difficult to argue that the applicant has an exceptional or demonstrable economic need to live in this rural area in accordance with the provisions of the development plan and the National Planning Framework, or that his housing need could not be accommodated in Dingle or surrounding towns/villages.
- 8.2.7. I consider that a stronger case can be made in terms of applicant's demonstrable social links. The applicant was brought up on the family farm and spent a substantial part of his life in this rural area. He now wishes to reside close to his parents to provide help and assistance both on the family farm, and to his mother who has health issues and a debilitating condition. On this basis, I consider that a more

substantive case can be made that the applicant has established a demonstrable social need to reside in this rural area, subject to siting and design criteria.

8.2.8. I note that the planning authority have accepted that the applicant satisfies the rural housing policy for the area. I accept that there is sufficient evidence on the file to demonstrate that the applicant is an intrinsic part of the rural community and has a rural generated housing need as defined in Objective KCDP 5-14. I would therefore accept that the development is acceptable in principle in the area subject to subject to good planning practice which is discussed in more detail below.

8.3. Impacts on the visual amenities of the area

8.3.1. The appellants do not accept that the site is located in an elevated and prominent location or that the provision of an additional house in this area would detract from the visual amenities of the area.

8.3.2. The site is located outside the '*Visually Sensitive Areas*' designated in the plan and with an area identified as '*Rural General*', which are considered to have the capacity to absorb development. Notwithstanding this, there is a requirement that development in all areas be integrated into their surroundings. Applicants are also required to have regard to the '*Building a House in Rural Kerry-Design Guidelines*' which also emphasises the need to integrate development. It identifies 4 no. landscape types, based on their character and ability to absorb development.

8.3.3. The site is located in an '*upland area*' where the traditional settlement pattern is described as consisting of informal clusters, incorporating vernacular architecture. In these areas traditionally dwellings were sited on the land in an informal manner blending in with the character of the landscape.

8.3.4. More recent development in the vicinity of the site has adopted a more formal approach to housing development in the form of ribbon development extending out along the road network. I would not accept appellants' contention that the proposal would involve infill within an existing cluster as envisaged in the Guidelines.

8.3.5. Whilst located outside the most visually sensitive landscapes in the county, I note that the site lies within the line of the protected views and prospects from the N86 along the approach to Dingle. There is no description of the view in the development plan, but it is orientated towards the uplands in the distance, where the site is

located. While, the view is not pristine, being impacted by existing permitted development, it does increase the overall sensitivity of the appeal site.

- 8.3.6. I accept the planning authority's position that the site is elevated and exposed. It's location on a hillside which also lacks shelter makes it more difficult to integrate. A detailed contour survey and site analysis as required by the Guidelines has not been submitted with the application, which also lacks specific details on what informed the siting and design of the development on the subject site. A cross section showing the finished floor level of the house relative to the adjacent dormer dwelling would also have been useful in terms of assessing its impact locally.
- 8.3.7. In an effort to integrate the proposed development into the landscape, the applicant proposes to cut significantly (c 3m) into the slope to the rear of the site. The Guidelines caution against excessive cutting of a hillside, to prevent scarring of the landscape. The applicant proposes screen planting to further assimilate the development into its surrounding. Whilst the house is an attractive contemporary design, it is at a remove from the simple traditional vernacular style envisaged by the Guidelines for upland areas.
- 8.3.8. The planning authority has been consistent in its approach to development proposals in this area. All previous applications on these lands have been refused on the grounds of their impact on the visual amenities of the area arising from the prominent and exposed nature of the site and the precedent that would be created for further ribbon development.
- 8.3.9. While I accept the rural generated housing need of the applicants, in my opinion there is no material change in planning circumstances to warrant a reversal of the planning authority's decision in this case. I accept that the proposal will contribute to the formal pattern of ribbon development which is considered inappropriate in upland areas and will create a precedent for similar development in the area, which would detract from character of the rural area. I consider that to permit such development would be contrary to the objectives of the of the development plan, which seek to protect the landscapes of the county and would therefore be contrary to the proper planning and sustainable development of the area.

8.4. **Other matters**

- 8.4.1. Foul effluent from the proposed house would be treated in a Tertiary Treatment System with a sand polishing filter which would be located to the front of the site. Effluent would flow by gravity to the treatment unit and from there it would be pumped to the polishing filter prior to discharge to ground.
- 8.4.2. The Site Suitability Assessment has been carried out in accordance with the EPA's Code of Practice: Domestic Waste Water Treatment Systems (2021). The site overlies a Locally Important (LI) aquifer with an 'Extreme' vulnerability rating. A groundwater response of 2¹ suggests that the site is suitable for an onsite treatment system. The trial hole excavated on the site was dug to a depth of 3m and no rock or water was encountered. There was no evidence of a seasonal water table or preferential flows. The P and T tests carried out revealed soil with adequate percolating properties.
- 8.4.3. The proposed effluent treatment system is designed in accordance with the EPA Code of Practice and satisfies the distance requirements set out in Table 6. On the basis that the suitability of the site for the proposed treatment system has been established and the minimum separation to boundaries, roads, dwelling, surface water features can be complied with, I consider that foul effluent from the house can be effectively treated and discharged to ground without posing a threat to surface water or ground water quality.
- 8.4.4. I note that the Site Assessment Unit of Kerry Co. Council accept the conclusions reached in the assessment and have raised no objection to the development subject to conditions.

8.5. **Appropriate Assessment**

Having regard to the modest nature and scale of development, the nature of foreseeable emissions therefrom, the distance from any European site and the absence of a pathways between the site and any European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. On the basis of the above assessment, I recommend that permission be refused for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. The proposal to locate a dwelling house on this prominent and exposed site would seriously injure the visual amenities of the area by reason of its obtrusiveness. The proposed development would give rise to an extension of undesirable ribbon development in this rural area which would interfere with the character of the landscape which is necessary to preserve in accordance with Objective KCDP 11-78 of the Kerry County Development Plan 2022-2028. The proposed development 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.

Breda Gannon
Planning Inspector

26th January 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 315113-22		
Proposed Development Summary	Dwelling house and effluent treatment system.		
Development Address	Garfinny. Dingle. Co. Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	yes	
	No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
Yes		Class/Threshold.....	Proceed to Q.4
No	X	N/A	No EIAR or Preliminary Examination required

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: *Reela Gannon* Date: 26/1/24