



An
Bord
Pleanála

Inspector's Report

ABP-315563-23

Development	3 Houses and associated site works.		
Location	Listry, Co. Kerry.		
Planning Authority Ref.	22/1130.		
Applicant(s)	Declan Byrne.		
Type of Application	Permission Consequent on the Grant of Outline Permission.	PA Decision	To Grant Permission Consequent.
Type of Appeal	Third Party.	Appellant	Máire O'Grady Mann.
Observer(s)	None.		
Date of Site Inspection	3 rd January, 2024.	Inspector	Aiden O'Neill.

Context

1. Site Location/ and Description.

The proposed development site is c. 0.8ha in area and is an undeveloped open agricultural grass field located to the south of the Church of the Immaculate Conception and adjoining graveyard in the rural area of Listry, Co. Kerry. It is irregular in shape and is bounded to the north by a gate and fence, and to the

south, east and west by a mature hedgerow. It is accessed via an existing private road which connects to the public road to the north. Sightlines at the junction of the private road and the public road of 100m and 126m to the east and west respectively are available. This existing road also serves a commercial development to the south-west. Lands to the immediate east and west of the proposed development site are agricultural fields. To the west of the church along the public road is a ribbon development of 5no. individual dormer/single-storey dwellings. To the east of the church along the public road is an undeveloped site, a detached modernised two-storey dwelling, and a single-storey dwelling with stables to the rear. To the north of the public road is a greenfield, and to the north-east of the public road is detached dormer bungalow and a 2-storey dwelling with single-storey side extension. Listry Cross Roads on the R563 Killarney/Fossa to Milltown Road is located c. 100m to the east of the church. Faha National School is located c. 3.5km along the R563 to the south-east. Killarney is located c. 13km to the south-east.

2. Description of development.

The proposed development consists of permission consequent on the grant of outline permission PA Ref No. 19/553 for the construction of 3no. 2-storey 4-bed dwelling houses complete with treatment units and polishing filters. Site no. 1 is 0.224ha, site no. 2 is 0.285ha and site no. 3 is 0.290ha. Each dwelling is 198m² in area, and c. 8.1m in height, with smooth plaster finish to walls and to be painted with neutral colours. Each roof is to be finished in blue-black slate with 3no. roof lights to the front. Each dwelling is provided with 2no. car parking spaces.

The houses are to connect to the public mains. Surface water is to be addressed via 3no. soakpits. The FFL of each dwelling is 24.25mOD. A Landscape Plan proposing native trees is included with the planning application.

3. Planning History.

The following planning history applies to the proposed development site:

PA Ref. No. 19/553 Outline planning permission to construct 3nr dwelling houses c/w treatment units and polishing filters and (2) permission to construct access

road and services at Listry, Co. Kerry granted on 13th December, 2019, subject to 27no. conditions, including:

2. the dwelling houses shall be located on the site in accordance with the site layout plan received on 15/10/2019.
3. the proposed dwelling houses shall be two storeys in height and shall be consistent and in keeping with the existing dwelling houses on the adjacent sites. Precise details shall be agreed at permission consequent stage.
5. Notwithstanding the provisions of the Planning and Development Regulations 2001, no part of the proposed 3 no. dwelling houses shall be used for the provision of overnight commercial guest accommodation without [a] prior grant of planning permission.
6. Any permission granted pursuant to an application made within three years of the date of grant of this outline permission, which is for development which falls within the terms of this outline permission, shall be subject to a condition requiring the Developer to pay a contribution to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefiting the development. The amount of this contribution shall be calculated in accordance with the Council's Development Contribution Scheme prevailing at the time of making of this consequent permission (or any provisions replacing it) and shall be subject to such provision as may be made in that scheme for the rate of increase or indexation to apply in the period between the date on which this amount was calculated, and the date of payment.

Note that this application for Outline Permission was assessed under the provisions of the Kerry County Development Plan 2022-2028. In the Supplementary Information that accompanied the planning application, it is stated that the 3no. dwellings are to be sold, subject to rural settlement policy.

ABP Ref No. PL08.220928, PA Ref No. 05/407: The proposed development site formed part of a larger site for 73 no. Houses, 7 no. Retail Units, 4 no. Apartments, Hotel and all Ancillary Works, which permission was refused on appeal (following a split decision by the PA – Grant permission for (a) the construction of 32 dwellings (b) construction of hotel, bar, restaurant and 18 bedrooms (c) proprietary

wastewater treatment plant and percolation area (d) water supply network with storage reservoir and roads, services, green areas and site development works associated; Refuse Permission for (e) the construction of 39 dwellinghouses (f) Retail/residential block comprising 6 no. retail units and 5 no. apartments and (g) site development works). Permission was refused by the Board on 9th August, 2007 for the following reasons:

1. It is considered that the layout of the proposed development would contravene the objective of the Local Area Plan for Listry/Faha in relation to the development of a mixed use streetscape frontage along the part of the application site adjoining the R563 Regional Road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the high water table on the site, the Board is not satisfied that the proposal to dispose of treated effluent to ground water via a percolation area would not give rise to an unacceptable risk of pollution of ground water. The proposed development would, therefore, be prejudicial to public health.

PA Ref No. 03/1903 Outline Planning Permission Granted on 18th March, 2004 for (i) a public house/restaurant; (ii) a commercial/residential block comprising ground floor retail units and 5 apartments above; (iii) an apartment block comprising 8 apartments; and (iv) 57 dwellings.

4. National/Regional/Local Planning Policy (see attached)

- The Kerry County Development Plan 2022-2028 was adopted by the PA on 4th July, 2022. It has regard to national and regional policies in respect of rural housing development.
- The proposed development site is located in a Rural Area Under Urban Influence. The nearest settlement in the hierarchy in the Plan for the County is Faha, c. 3.5km to the south-east, which is designated as a small village settlement. The key policies are as follows:
- Section 5.5.1.2 of the Plan in relation to Rural Areas Under Urban Influence in these areas states that 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.

- KCDP 5-15 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.
- Section 5.5.2.1 of the Plan sets out the provisions of an Occupancy Condition and Section 47 Agreements.
- KCDP 5-15 in relation to Rural Areas under Urban Influence.
- KCDP 5-19 in relation to rural housing and landscape.
- KCDP 5-20 in relation to an Occupancy Clause.
- KCDP 5-21 in relation to normal planning criteria.
- KCDP 5-22 in relation to design of housing in rural areas.
- KCDP 5-23 in relation to holiday / second homes.

There are no Views or Prospects applicable to the site or the immediate area. The site is also not located in a visually sensitive area. The Church of the Immaculate Conception to the north of the proposed development site is a Protected Structure, reference RPS-KY-0834, and is listed on the NIAH, 21305702 (regional rating). The proposed development site is not located in a Flood Zone.

The Killarney Municipal District Local Area Plan 2018-2024, Listry, along with Faha, is identified as a Development Node. The following objectives apply:

- VN-01 Ensure that development within these nodes shall be designed to a high standard and reinforce the character of the existing settlement.
- VN-02 Promote the development of residential units on vacant, derelict and infill sites.
- VN-03 Promote the development of lands closest to the development node centre in the first instance and the development of good pedestrian and amenity links.
- VN-04 Ensure that roadside development within the development node should be sited and designed to ensure that the development potential of backland sites is not compromised and that suitable vehicular and pedestrian access to these lands is retained.

- Details of these policies are attached.
- Note that there is no reference to 'Development Nodes' in the Kerry County Development Plan 2022-2028.
- Furthermore, note that whereas the LAP references Faha and Listry as a 'Development Node', the Kerry County Development Plan 2022-2028 only references Faha as a small village settlement. No reference is made to Listry.

5. Natural Heritage Designations

- The proposed development site is located c. 200m, from the nearest Designated Site, the Castlemaine Harbour SAC (Site Code 000343). The proposed development site is also located c. 6.5km from the Castlemaine Harbour SPA (Code 004029).

Development, Decision and Grounds of Appeal

6. PA Decision.

The Planning Authority decided to grant permission by Order dated 21st December, 2022 subject to 11no. conditions.

The planner's report is the basis for the Planning Authority's decision to grant planning permission.

Condition no. 4 states that the proposed 3no. dwelling houses shall be in accordance with the design drawings received on 01/11/22, including roofs to be covered with slates which shall be clack, dark-grey or blue-black; external finishes to be neutral in colour, tone and texture.

Condition no. 6 requires that the service roadway granted full permission under Planning Register No 19/553 shall be fully complete prior to the occupation of any of the proposed dwelling houses.

7. Third Party Appeal.

The appeal sets out the following grounds:

- Flooding and Drainage

- There already has been a refusal of FPP consequent to a grant of OPP under ABP Ref No. PL 08.220928, on public health grounds. There is inadequate information on the water table in which three separate percolation areas are proposed.
- The application site floods and is in a flood zone, which can only be exacerbated with the additional hardstanding. It lies 300m south-east of the Gweestin River, an important aquatic resource that requires protection as one of the main salmonid spawning and nursery tributaries of the Laune River. The proposed development site is elevated from existing neighbouring lands.
- Design of the Proposed Dwellings
 - The outline permission did not specify 2 storey houses of this scale. The designs do not comply with the Kerry County Council Rural Housing Guidelines. It is out of character.
 - The development will interfere with rear garden privacy and negatively impact the value of neighbouring property.
- Access Road
 - A substantial commercial entrance has been developed without permission. The site lines are limited in both directions. This impedes the enjoyment of private lands, church services and pedestrian safety, and has resulted in the removal of car parking for the adjoining church. This appears to be the start of a larger development.
 - Access is from the minor road with no direct access to the R563. The junction between the minor road and the R563 does not have good visibility.
- Compliance with the Development Plan
 - The area is zoned Rural Areas under Urban Influence, and therefore development should be limited. Applications for permission have been refused on the basis of non-compliance with the rural housing policy. The proposed development would set an unwanted precedent. The applicant has demonstrated no ties to the area. The application does not comply with

National Policy Objective 19 of the National Planning Framework and the Sustainable Rural Housing Guidelines.

- Permission should be refused.

Applicant's response

The applicant's response dated 2nd February, 2023 sets out the following items:

- All the photographs have been taken by the appellant in the vicinity of her own stables, which are considered to be unauthorised, remote from the application site.
- The flooding issue raised by the appellant arises from the infilling of a roadside hedge to accommodate the jumping arena associated with the stables.
- The groundwater levels submitted with the site characterisation reports are accurate.
- The site is not located in the flood zone of the River Gweestin.
- The polishing filters would not be susceptible to flooding from the river.
- All matters raised by the appellant were addressed in the application for outline permission.
- The proposed development is in total conformity with the surrounding area, and it is requested that the decision of Kerry County Council is upheld.

8. PA Response

- None on file.

Environmental Screening

9. 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 impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10. AA Screening

Having regard to the modest nature and scale of development, and absence of connectivity to European sites, 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.

2.0 Assessment

2.1. Having examined all the application and appeal documentation on file, and having regard to relevant policy, I consider that the main issues which require consideration in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

2.2. The main issues are as follows:

- Flooding and Drainage
- Design of the Proposed Dwellings
- Access Road
- Compliance with the Kerry County Development Plan 2022-2028

2.3. Flooding and Drainage

2.3.1 The appellant references a previous refusal of permission on appeal, ABP Ref No. PL08.220928, PA Ref No. 05/407, for a development on a larger plot of land including the applicant's lands, where the second reason for refusal was on public health grounds.

2.3.2 The appellant also contends that the proposed development site is located in a flood zone, and flooding will be exacerbated by the increased hardstanding of this elevated site relative to surrounding properties.

2.3.3 The applicant confirms by reference to the most recent CFRAMS Maps that the proposed development site is located well outside the flood zone of the River

Gweestin, which is at a lower level than, and at a remove from, the proposed development site.

- 2.3.4 In addition, neither the PA's planner nor Housing Estates engineer raise any concerns in relation to flooding.
- 2.3.5 In addition, the suitability of the site for the proposed development, including the proposed wastewater treatment system and percolation areas, was accepted in the application for outline planning permission. The report of the PA's Heritage Officer dated 16th November, 2022 on file also states that the proposed system will be required to comply with the EPA Code of Practice, and that no impacts to groundwater are likely from the proposed development.
- 2.3.6 No evidence of flooding of the proposed site was observed on the day of the site visit, which was after a period of considerable rain. There was evidence of localised ponding on the access road, which would not be considered to be significant or give rise to flooding concerns, particularly as this access road is incomplete.
- 2.3.7 Therefore, the proposed development site is not located in a flood zone. The previous refusal issue on public health, which applied to a much larger site, was addressed to the satisfaction of the PA in the application for outline planning permission and was not subject to appeal.
- 2.4. Design of the Proposed Dwellings
- 2.4.1 The appellant contends that the design of the proposed dwellings is out of character with the area, and do not comply with the Kerry County Council Rural Housing Guidelines.
- 2.4.2 While the design of the proposed dwellings is unimaginative, the 3no. dwellings are nevertheless of uniform design, and would not be out of character in this rural location and would not detract from the visual qualities of the area, being located away from the public road, and c. 11.4m to the south of the church.
- 2.4.3 The proposed development will not give rise to any impact on the privacy of properties in the vicinity, given the distance from any existing dwelling. The proposed development will also not devalue residential property in the vicinity, given that residential use is proposed.

2.5. Access Road

2.5.1 The appellant contends that the entrance road serves a large commercial development to the south-west, and that this entrance road does not have planning permission. It is stated that this road impedes the enjoyment of private lands, church services and pedestrian safety, and has resulted in the removal of car parking for the adjoining church.

2.5.2 While this access road would not impede the use of adjoining lands or church services (including parking spaces) or pedestrian safety, although noting that it is incomplete, there does not appear to be any permission for that section of the access road as it continues beyond the entrance to the proposed 3no. dwellings to serve the existing commercial use to the south-west. It appears from the information on the file that this was previously an agricultural track, but it is more significant than an agricultural track, being an incomplete access road, c. 2m in width and currently topped in loose gravel. There also does not appear to be any permission for the commercial use. This use lies outside the application boundaries, however, and although not shown on the planning drawings, part of this access road that serves the commercial use falls within the red line boundary of the proposed development and, in this regard, I would agree with the concerns raised by the Housing Estates Engineer in his report of 9th November, 2022 on file. This section of existing access road appears to directly impact the development of Site No. 1 as laid out in the planning drawings. There may also be consequential impacts on Site Nos. 2 and 3. The Housing Estates Engineer also requested clarification on how the owner of the commercial use could access the buildings to the south-west if the proposed development goes ahead. The PA planner's report does not address these issues at all. In the absence of this clarification, this issue remains unresolved. The Board may wish to invite submissions from the applicant on this point, however, based on the available information, it appears that the proposed development cannot be implemented as illustrated in the planning drawings. It would be premature to grant planning permission in the absence of a road layout.

2.6. Compliance with the Kerry County Development Plan 2022-2028

2.6.1 The appellant contends that the proposed development site is located in a Rural Area Under Urban Influence where applicants are required to comply with the

applicable rural housing policies set out in the Plan. The appellant contends that the proposed development will set an undesirable precedent.

2.6.2 The PA planner's report considers that these issues were addressed in the outline planning permission. At the time of the outline planning application, the proposed development site was located in the Faha/Listry Development Node, as designated in the current Killarney Municipal District Local Area Plan 2018-2024, and consistent with the Kerry County Development Plan 2015-2021.

2.6.3 However, the new Kerry County Development Plan 2022-2028 no longer refers to 'Development Nodes', but, instead, refers to small village settlements, and only references Faha as a small village settlement. No reference is made to Listry. Volume 4 (Maps) of the Kerry County Development Plan 2022-2028 only identifies Faha as a small village settlement.

2.6.4 Having regard to the Planning Guidelines on Local Area Plans, June 2013, a Local Area Plan is required to be consistent with the Core Strategy of the Development Plan. It is noted that there is a commitment in the Kerry County Development Plan 2022-2028 to review the Killarney Municipal District Local Area Plan 2018-2024 to ensure that it is aligned.

2.6.5 In this context, and notwithstanding the grant of outline permission, the change in policy context requires consideration. It is noted that the PA planner's report refers to the Development Nodes designation of the Killarney Municipal District Local Area Plan 2018-2024 but does not reference the change in policy of the Kerry County Development Plan 2022-2028.

2.6.6 The Board may also wish to invite submissions from the applicant on this point, however, based on the available information, the proposed development, which is located in a Rural Area Under Urban Influence, is contrary to Policy Objective of KCDP 5-15 In Rural Areas under Urban Influence, as the applicant, who has indicated in the Supplementary Information that accompanied the planning application that the 3no. dwellings are to be sold, subject to rural settlement policy, has not satisfied 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. The proposed development

therefore materially contravenes Policy Objective of KCDP 5-15 of the Kerry County Development Plan 2022-2028.

3.0 Recommendation

- 3.1. I recommend that permission for the development be refused for the following reasons and considerations.

4.0 Reasons & Considerations

1. Based on the available information, and by reason of the existing access road which traverses part of the proposed development site, the proposed development cannot be implemented as illustrated in the planning drawings. Development of the kind proposed would be premature pending the determination of a road layout for the area.
2. Policy Objective KCDP 5-15 of the Kerry County Development Plan 2022-2028 in relation to Rural Areas under Urban Influence requires that 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. It is considered that the proposed development which involves the provision of three houses without restriction on their occupation would not come within the scope of the housing need criteria as set out in Policy Objective KCDP 5-15 of the Kerry County Development Plan 2022-2028 for a house at this location. In this regard, the proposed development would materially contravene Policy Objective KCDP 5-15 of the Kerry County Development Plan 2022-2028. The proposed development, in the absence of any identified locally based need for the house, 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. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Kerry County Development Plan 2022-2028

Relevant Policies

Chapter 5 of the Kerry County Development Plan 2022-2028 sets out the Council's policies with respect to rural housing.

Section 5.5.1.2 of the Plan in relation to Rural Areas Under Urban Influence In these areas, 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.

KCDP 5-15 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.

Section 5.5.2.1 of the Plan sets out the provisions of an Occupancy Condition and Section 47 Agreements.

In relation to Occupancy Condition: All permission granted for rural housing shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

In relation to Section 47 Agreements: In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming overdeveloped the Council may seek agreement under Section 47 of the Planning Act if it considers it necessary to regulate development in the area.

The following rural housing policies are of note:

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.

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

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

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

Policy objective KCDP 5-23 seek to ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.

Killarney Municipal District Local Area Plan 2018-2024

Section 3.1.6 of the LAP sets out the specific policies with respect to Development Nodes.

It is stated that there are a number of development nodes in the Killarney Municipal District. These are Ballyhar, Currans, Glenflesk and Faha/Listry. These development nodes are the lowest tier on the settlement hierarchy as included in the Kerry County Development Plan 2015-2021. Many of these nodes are predominately residential in character and it is anticipated that their existing character and function will remain as primarily residential loose clusters of housing. This Local Area Plan supports the enhancement of local services in the various settlements and the provision of additional services in appropriate locations. It is important to preserve and enhance the natural and built character of development nodes and encourage small scale expansion at a scale, layout and design that reflects the character of each node. It is important that any future development maintains the integrity of the surrounding landscape, particularly any designated high value landscapes. In order for these nodes to develop in an orderly manner, it is important that improvements are made to the settlements' infrastructure. It is intended that any future growth will be largely organic in nature based on small- scale developments. Development potential may be limited to a small number of individual dwellings supported by individual waste water treatment systems.

Targeted population growth has not been allocated to these settlements under the County Plan and to this end no lands have been zoned in these nodes. A proposal for a local employment opportunity at a scale appropriate to the particular node, either through the refurbishment of an existing building or the provision of a new building, will be considered.

Development Nodes Objective No: It is an objective of the council to:

VN-01 Ensure that development within these nodes shall be designed to a high standard and reinforce the character of the existing settlement.

VN-02 Promote the development of residential units on vacant, derelict and infill sites.

VN-03 Promote the development of lands closest to the development node centre in the first instance and the development of good pedestrian and amenity links.

VN-04 Ensure that roadside development within the development node should be sited and designed to ensure that the development potential of backland sites is not compromised and that suitable vehicular and pedestrian access to these lands is retained.

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.

Aiden O'Neill

Aiden O'Neill
Planning Inspector

18th January, 2024