



An
Bord
Pleanála

Inspector's Report ABP316008-23

Development	Construct a single storey dwelling, septic tank and percolation area and all associated site works.
Location	Duagh, Camp, Tralee, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/1282.
Applicant(s)	Jeffrey Smith.
Type of Application	Outline permission.
Planning Authority Decision	Refuse outline permission.
Type of Appeal	First Party
Appellant(s)	Jeffrey Smith.
Observer(s)	None.
Date of Site Inspection	11 th September 2023.
Inspector	Ann Bogan.

1.0 Site Location and Description

- 1.1. The site is located in Duagh, Camp, on the Dingle peninsula, about 20km from Tralee, south of the small settlement of Aughacaslá. The site is south of the R-560 Regional Road which heads westwards towards Castlegregory and along the western side of the Dingle Peninsula.
- 1.2. The site is 0.48ha in area and has no direct road frontage. It is accessed via an existing 70m gravel agricultural track, which rises steeply from the nearby local road, L-8016. The site is above and to the rear (south) of a number of existing houses which front directly on to the local road. The site and adjoining field are in the ownership of the appellant.
- 1.3. The site is currently a field, recently cut for silage/hay, and bounded by dense hedgerows with some trees, and adjoins other fields. A small section of the site boundary abuts an existing dwelling boundary to the south. There are views from the site of surrounding hills and the Slieve Mish mountains, and of the coast to the north-east through the boundary hedge.

2.0 Proposed Development

- 2.1. The proposed development is for outline permission for:
 - A single-story dwelling house on land owned by the applicant
 - House site would be cut into the site to reduce visual impact and it would be backed by a landscaped bank
 - Septic tank to the rear (south) of the dwelling and a percolation area to south-west above the landscaped bank. Application is accompanied by a site characterisation form. Water supply would be from the public mains
 - Access is shown via route of existing agricultural access road.
 - Indicative vegetation is shown around the perimeter of the site, apart from the views towards the coast to the north-east, where no planting is shown, implying removal of existing hedgerow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reasons:

1. The proposed erection of dwelling to the rear of existing and permitted residential development would constitute disorderly backland development and would seriously injure the residential amenities of the property in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed erection of a dwelling at this location by reason of its siting to the rear of the existing residential development would be unduly obtrusive by virtue of its visual impact on the landscape and would interfere with the rural 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. The proposed development would contravene materially condition 4 attached to an existing permission for development on site, Reg. No. 20/121, requiring the entrance and access road to be used for agricultural purposes only. 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 Planning Officer considered that the development would constitute 'haphazard backland development in an elevated rural location within the line of Protected Views and Prospects and would impact negatively on residential amenities of existing dwellings', and recommended refusal of outline permission. The planning authority's decision is based on this recommendation.

Having regard to the nature and scale of the development it was considered by way of preliminary examination that the proposed development did not require EIA

screening or EIA. It was concluded that AA is not required as there is no likelihood for significant effects on any Natura 2000 sites.

3.2.2. Other Technical Reports

Planner's report refers to Site Assessment Unit (SAU) Environment Dept report recommending conditions (not on file).

4.0 Planning History

4.1. Subject site

20/121 Permission granted for a vehicular entrance and access road to allow access to agricultural land. Condition 4: Entrance and access road shall be used for agricultural purposes only.

4.2. Adjoining site

08/286 Permission refused permission for demolition of derelict house and outline permission refused for three dwellings with mechanical aeration units and raised bed polishing filters for 5 reasons, which were, in summary: non-compliance with Rural Settlement Policy, traffic hazard due to restricted sightlines, concerns re adequate disposal of effluent, visual impact on the landscape.

4.3. Nearby site

21/1509 Outline permission granted for dwelling and effluent treatment system and permission to change use of existing dwelling to store. This site does not adjoin the subject site but was part of the larger site refused permission under 08/286 above for 3 dwellings. It has a derelict dwelling on it and fronts onto the local road.

5.0 Policy and Context

5.1. National Policy

Sustainable Rural Housing Guidelines 2005

The Guidelines aim to ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate

locations, necessary to sustain rural communities is accommodated. The Guidelines state that areas under strong urban influence exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

National Planning Framework

National Policy Objective 19

‘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.’

5.2. Development Plan

Kerry County Development Plan 2022-2028

Vol 1 Chapter 5 Rural Housing

‘5.1 It is the policy of the Council to ensure that future housing in rural areas complies with all National Policy documents including the National Planning Framework (NPO 15 & 19), the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (DoEHLG), RSES and Circular PL 2/2017 and this will be achieved through greater emphasis on the following:

(a) Establishing that there is a genuine economic or social need for permanent occupation.

(b) Prioritising the reduction of residential vacancy rates in all the Rural Areas in preference to new residential development.

(c) The renovation or modification of existing structures in rural areas for residential use.

(d) Encouraging people who wish to reside in the countryside to live in existing villages or small village settlements where there are services available’.

The subject site is designated in the Plan as a **Rural Area Under Urban Influence:**

‘Objective 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.

Rural Housing Objectives:

KCDP 5-17 *Monitor the trends in rural housing and population during the lifetime of the plan to ascertain if further rural housing policy responses are required during the plan period.*

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.*

Chapter 11 Environment

Landscape Protection

Section 11.6 sets out objectives in relation to protection of the rural landscape:

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.*

KCDP 11-78 *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.*

There are two landscape designation in County Kerry:

- Visually Sensitive Area

- Rural General

The subject site is in an area designated as Rural General.

11.6.3.2 Rural General

Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes. Notwithstanding the higher capacity of these areas to absorb development, it is important that proposals are designed to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area. Permission will not be granted for development which cannot be integrated into its surroundings.

Views and Prospects

The site is within the line of Protected Views from the R560 Regional Road which runs to the north of the site and the following objectives apply:

KCDP 11-79 *Preserve the views and prospects as defined on Maps contained in Volume 4.*

KCDP 11-80 *Facilitate the sustainable development of existing and the identification of new Viewing Points along the route of the Wild Atlantic Way in conjunction with Fáilte Ireland, while ensuring the protection of environmental attributes in the area through the implementation of environmental protection objectives, standards and guidelines of this Plan.*

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.*

5.3. Natural Heritage Designations

1.2 km from Tralee Bay SAC

5.4. **EIA Screening**

- 5.5. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal submitted by the agent on behalf of the appellant are set out below:

- The proposed development is in a Rural Area under Urban Influence and while the applicant need only demonstrate he qualifies under one of the sub-categories in KCDP 5-13 he complies with the categories of housing need set out in d and e, namely a landowner, building a first house for the applicant and his family who is a native of the area.
- Visual impact of the development: the site is not within an area designated as visually sensitive nor in an area containing a view or prospect of Special Amenity. To be denied permission to develop his own land, the visual impact must be an impact of materiality and substance as opposed to the reality that every development has some visual impact.
- Breach of condition: If outline permission were granted the change of use of the existing agricultural access would be an integral part of an application for (full) permission and will be fully assessed from road safety and suitability. At this stage the presumption that such an application from agricultural to domestic would be refused and therefore breaches a condition is premature.
- The development would add a fifth house to four existing houses set out in a linear form. Given the desirability of ameliorating the visual impact of linear development and creating (at least visually) cluster development (Objective

5.13), the categorisation of the proposed development as “disorderly background (sic) development” is entirely subjective.

- The suggestion that the proposed development of a single storey house, close to existing development with a low ridge height would be “unduly obtrusive” is unjustified.

6.2. **Planning Authority Response**

- None

6.3. **Observations**

- None

6.4. **Further Responses**

- None

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on the appeal file, including the appeal submission and having inspected the site and having regard to relevant national and local policies and guidance, I consider the main issues to be considered are:

- Compliance with rural housing policy
- Visual impact
- Other issues
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. The site is within an area designated a ‘Rural Area under Urban Influence’ in the County Development Plan, where applicants for development of houses must demonstrate *‘an exceptional rural generated housing need based on their social (including lifelong or life limiting) and/or economic links to live in a particular rural*

area'. The criteria in the Plan includes 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. I note the applicant outlines that he is from the area and grew up at Carrigduv, 2.5km from the site, and he and his family currently live in a rented house near the site and that his wife acts as a carer for his mother, although documentary evidence of this is limited to a map showing the location of the respective houses. I understand based on details submitted that he is a self-employed block layer and works in the Camp-Castlegregory area. No documentary or other evidence is provided of an economic need to live in the area.

The Sustainable Rural Housing Guidelines 2005 indicate circumstances for which a genuine housing need might apply including persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas in rural based professions such as farming, marine, or a local teacher. In addition, Policy Objective 19 of the National Planning Framework requires that, in rural areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area, and on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.'

- 7.2.2. In this case the appellant has links to the area, although has not demonstrated an economic need to live in the area, and taking into account the location and characteristics of the site and the proposed development, it is not evident, in my opinion, that an exceptional rural housing need to live in this location has been established.
- 7.2.3. Section 5.4 of the Development Plan states it is the policy of Kerry County Council to seek to strengthen and diversify rural towns and villages to be a focus for local housing and further states it is the policy of the Council to encourage people who wish to reside in the countryside to live in villages or small village settlements where services are available. Many villages have been experiencing decline or stagnation while pressure for single houses in the countryside continues. In this instance, a considerable amount of dispersed housing is evident in the wider area. There for example, four existing houses and permission for a fifth on the narrow stretch of road frontage adjoining the subject site, which could constitute ribbon development.

7.2.4. The proposed house is above and to the rear of the existing houses on a 'backland' site, accessed by an agricultural road. I note that outline permission was previously refused in the past for 3 houses on an adjacent backland site to the east, for reasons including non-compliance with rural housing policy and visual impact. The appellant suggests the proposed dwelling could be considered a cluster with the existing houses, under the development plan cluster objectives. However, it is clear that it would not meet the criteria for a cluster under Development Plan (Objectives 5.08-5.13) as these clusters are limited to specified villages with the stated intention of providing an alternative to one-off housing in the countryside and promoting development in villages, nor would the form of development meet the criteria for a cluster.

7.2.5. In my opinion the proposed development would constitute a disorderly form of housing development on a 'backland' site in a rural area which would create an undesirable precedent for similar developments and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. Furthermore, while he has links with the area, I am not satisfied that the appellant has established an exceptional rural generated housing need to live in this location, in accordance with Development Plan and national rural housing policy. As such, I believe the proposed development would be contrary to rural housing policy and not in accordance with proper planning and sustainable development of the area

7.3. **Visual Impact**

7.3.1. There are two landscape designations in the County Development Plan and the site is in 'Rural General' (as opposed to Visually Sensitive') and though such areas should be able to more easily accommodate development, the policy says permission will not be granted for development which cannot be integrated into its surroundings (Objective KCDP 11.78). The site is quite elevated and prominent. and is within the line of Protected Views and Prospects from the R560 regional road to the north, with the backdrop of hills and the Slieve Mish Mountains, which it is an objective to protected under KCDP 11-79. I note the intention shown on drawings to orient the dwelling towards the views of the coast to the north east, and that the drawings seem to indicate removal of the existing native hedgerows on part of the boundary facing north, presumably to give better views of the sea, but also

increasing its potential visual impact on protected views and the rural landscape.. Despite the proposal to mitigate the visual impact by 'cutting' the dwelling into the site I am not satisfied that the proposed development would not have a materially negative impact on the protected views and on the rural landscape of the area, contrary to objectives 11.78 and 11.79 of the Development Plan.

7.4. **Other Issues**

- 7.4.1. Residential Amenity The site is above and to the rear of the existing houses. The closest three houses are approximately 50-60 m away from the proposed house and the houses are well screened by mature gardens and hedgerows. Therefore, I do not think the proposed development would have a significant negative impact on the residential amenities of the nearby houses.
- 7.4.2. Traffic Impact The site is shown accessed via a gravel track which provides an agricultural access route to the two fields which are in the ownership of the applicant. It is limited to agricultural use only, by condition 4 of planning permission (ref 20/121) and would need to be upgraded if it were considered appropriate to grant planning permission. The drawings submitted with the application indicate that sightlines to the west at the junction with the local road to be adequate but are below recommended standards to the east and this would need to be addressed if permission were to be granted. The proposed dwelling would create additional traffic movements from the access road to the public road, but the volume is unlikely to be such as to result in a significant change in the existing traffic flow and to create serious traffic hazard in the vicinity.
- 7.4.3. Waste water treatment A septic tank is proposed to the rear (south) of the dwelling and a percolation area to south-west above the landscaped bank. There was no evidence of rock outcrops or water ponding on the site and the nearest small watercourse is 75m distant. The Site Assessment Report found that no evidence of bedrock or water table at 2.2m and no mottling evident in the trail hole. The site passed the surface and sub-surface percolation tests, all minimum separation distances were met and the report concluded the site was suitable for development of a septic tank and percolation area system with discharge to ground water. Based on the information provided with the application and the site inspection I consider the proposed system would be adequate, subject to appropriate conditions.

7.5. Appropriate Assessment Screening

- 7.5.1. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

- 8.1. I recommend that outline planning permission be refused for the reasons set out below.

9.0 Reasons and Considerations

Having regard to the location of the site within a 'Rural Area under Urban Influence' as designated in the Kerry County Development Plan 2022- 2028, to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and the National Planning Framework National Policy Objective 19, it is considered that an exceptional rural generated housing need for a dwelling in this location has not been established and that the proposed development would result in a haphazard and disorderly 'backland' development, which could create a precedent for similar undesirable development, and would contribute to the encroachment of random rural development in the area and 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.

The erection of a dwelling on the proposed elevated site would be unduly obtrusive and would have an unduly negative visual impact on the rural landscape and protected views, which it is an objective to preserve in accordance with Objectives KCDP 11.78 and 11.79 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.

Ann Bogan
Planning Inspector

12th October 2023