



An  
Bord  
Pleanála

## Inspector's Report ABP-317521-23

<b>Development</b>	House and associated site works.
<b>Location</b>	Cools, Headford, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	2390
<b>Applicant(s)</b>	Barry and Catherine McAuley
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant of Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Myriam Dennehy Tara Duggan Cormac and Noelle Casey
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	3 November 2023
<b>Inspector</b>	Claire McVeigh

## **1.0 Site Location and Description**

- 1.1. The 0.18-hectare greenfield site is located in the townland of Cools approximately 2km southwest of the small village settlement of Headford and 15km to the south east of Key Town Killarney in County Kerry. The appeal site abuts a narrow local road approximately 60m to the south of Headford Junction now marked by an automated level rail crossing. An attractive double fronted former two storey building 'Station House' strongly marks the junction built close to the local road and to the north of the subject site there is a gable fronted two storey dwelling set back significantly from the local road to the north of the subject site. South of the subject site to the east side of the local road is an existing two storey house and a single storey property fronting onto the laneway. To the northern side of the railway line are a number of one-off two storey dwellings in a mix of styles including traditional farmsteads and a more ornate mock Georgian property facing a derelict single storey cottage.
- 1.2. The appeal site is enclosed by mature hedgerows and trees with ESB line crossing over the southern portion of the site. The front boundary is marked by sod and stone, hedgerow, trees with post and wire and ditch line. A level crossing warning sign is located just outside the existing entrance to the site. The site is elevated over road level rising generally to the northwest.
- 1.3. The immediate area is of historical significance as Headford Junction was the location of the Headford Ambush. A monument to commemorate the event is located circa 60m to the southeast of the appeal site fronting onto the regional road R570. Headford Junction itself is of significance in the history of railway transport and identified as forming part of the Kerry County Council planned Greenway Strategy.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a two-storey dwelling house (219.8 sq. metres) and detached garage (30 sq. metres) served by a wastewater treatment system and polishing filter. Water supply is proposed via a new connection to the public mains. It is proposed to dispose surface water to a soakpit. A new vehicular entrance is proposed with splayed entrance.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated 22<sup>nd</sup> June 2023 Kerry County Council issued notification of its decision to grant permission subject to 20 conditions, conditions of note include the following:

Condition 2 Development contribution €3,380 in accordance with Kerry County Council's contribution scheme.

Condition 9 Occupancy clause 7 years with section 47 agreement.

Condition 4 Dwelling to be primary residence and not used as a holiday home or second home.

Condition 8 Garage shall be used for domestic storage purpose only and not for any commercial or agricultural uses.

Condition 9 No part of any exempted structure shall be erected within 4.5m of the centre of any divisional boundary or adjoining property on either side of the proposed dwelling house.

Condition 11 The existing roadside boundary fence shall be removed and new front boundary fence set back 2.4m from the road edge.

Condition 17 The site shall be landscaped within suitable indigenous trees, shrubs and hedges in accordance with the landscaping scheme received on the 2 February 2023. All planting shall be native Irish species or Irish provenance and in consultation with recommendations from the All-Ireland Pollinator Plan, Pollinator Friendly Planting Code Guidelines.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Planner's initial report considered that the hipped roof proposed is not in accordance with the 'Building a House in Rural Kerry' design guide. The proposed house would not result in overlooking onto adjoining properties. Further information required in

relation to the design of the proper new wastewater treatment system, specifically in respect to the size and design of gravel distribution layer underlying the Sandcel system, further evidence to demonstrate record of renting in the immediate area and the applicants were requested to submit revised design proposals to take account of the criteria set out in the design guide.

Final report indicates that all issues raised in the further information request have been satisfactory addressed, no objection subject to conditions. Notes no change to the roof profile proposed but no objection considering that there is already a hipped roof to the property across the road and that the site is well screened.

### 3.2.2. Other Technical Reports

Site Assessment Unit (SAU): Water Services GI indicates that a connection to the public mains is available to the applicant.

The desk study carried out by the SAU agrees with the identified ground water response of R1 for the locally important aquifer with an identified moderate vulnerability. The SAU note that they did not visit the site.

Further information was sought in relation to the design for the proposed new wastewater treatment system that the gravel distribution layer underlying the Sandcel system has been sized and designed in accordance with table 10.1 EPA Code of Practice 'Domestic Wastewater Treatment Systems (Population Equivalent <10).

### 3.3. Prescribed Bodies

Uisce Éireann - No objection subject to standard conditions.

### 3.4. Third Party Observations

Submissions from Cormac and Noelle Casey acknowledge that the County Development Plan has changed from the previous development plan but have concerns that the applicants are not an intrinsic part of the rural community. Site has extensive ponding and there is a lot of rush. Neighbouring properties have had issues with their wastewater treatment systems with the increase in rainfall. There is natural spring 60m east of the proposed development and to the north extensive

elevated bog wet land area and forestry. Irish Rail undertaking works to redirect potential flood water away from the railway tracks on the northern side.

Submission from Myriam Dennehy owner of adjoining property to the north of the subject site. Concerns that the development will impact on and damage the mature boundary trees.

Submission from Seán Doherty landowner to the south/southwest of the proposed development. Concerns raised in respect to the lack of clarity in the drawings and particularly the landscape plan. Requests that the plan should clearly show that proposed landscaping will take place adjacent to existing ditch and within the boundary of the development site. Highlights the small size of site and poor ground conditions and concerns that their property which is on lower ground will be negatively impacted by hard surface rainwater runoff and seepage. The land north of the site once part of the disused Headford Railway Station drains via a watercourse which runs along the roadside boundary, preservation and continuing adequate function of the watercourse is of a concern.

Submission from Tara Duggan owner of small cottage on the opposite side of the road from the proposed application. Questions the applicant's compliance with the rural settlement policy for the area. Alternative option to renovate a cottage in the locality should be pursued. Issues raised in respect to the documentation lodged. Concerned about the design of the dwelling being large and overbearing in the context of her single storey cottage opposite. The development would give rise to overlooking. The application is very similar to the previous application 21/69 which was refused by An Bord Pleanála, feels that they have been put to unnecessary expense when a very similar application had previously been adjudicated by the Board.

## **4.0 Planning History**

### **4.1. Current site:**

Planning register reference 21/69 (ABP-310335-21): Brendan Stack and Brigitte Sheehan\* were refused permission (September 2021) on appeal for the construction of a new dwelling house, detached garage, connection to mechanical treatment unit, polishing filter and all associated site works. Refused on grounds that the applicants

do not come within the scope of the housing need criteria as set out in the guidelines and in national policy for a house at this location. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.

\*Site to be transferred to applicants subject to a successful grant of planning permission from owners Barry and Catherine McAuley.

#### Pre-application Consultation

In advance of submitting the current subject application a pre-application consultation PP22/286 was held in December 2022. The observations as recorded include:

- Rural General. Rural Area Under Urban Influence. PP ref 21/69. Lived in the area since 2013. Bought this site in 2018. RSP criteria appear to be met.
- Full details and back up information to be submitted with the application. No objection to the principle of development on the site ABP decision on 21/69 only related to RSP.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Under the Kerry County Council Development Plan 2022-2028 the site is unzoned but within a rural area designated as 'Rural Area Under Urban Influence'.

Chapter 5 set out the policies required for the continued sustainable development of rural County Kerry based on the following important five principles:

- 1) The specific land use requirements of agricultural activity will be accommodated as a first priority.
- 2) A focus on supporting vibrant rural communities centred on a network of rural village settlements is a cross cutting theme of this Plan.
- 3) Rural Kerry is an important national and international tourism and heritage asset, and its environmental and socio-cultural assets will be protected.

- 4) Encouragement and support for restoration and refurbishment of the existing built fabric in rural areas.
- 5) The requirement to transition to a low carbon and climate resilient society, necessitates consideration of the spatial pattern of development focusing on elimination of unnecessary trips, more efficient use of resources and opportunities to provide centralised and communal public services.

Section 5.5 highlights 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.

Section 5.5.2.1 outlines in respect to Rural Areas Under Urban Influence 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, and in this regard, must demonstrate that they comply with one of the following categories of housing need (a-e).

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

Relevant policies include:

KCDP 5-4     Ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005

(DoEHLG), circular PL2/2017, National Planning Framework (NPOs 15 & 19) and the Development Management Guidance of this Plan.

- KCDP 5-5 Ensure the careful and sustainable management of the countryside/ rural areas in order to adapt to and mitigate the effects of climate change.
- 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.

Volume 6 of the Kerry County Development Plan 2022-2028 contains development standards for residential development on rural and non-serviced sites, section 1.5.10.1-1.5.10.10 relate.

- KCDP 13-18 Ensure that proposed wastewater treatment system for single rural dwellings are in accordance with the 'Code of Practice Wastewater Treatment and Disposal System Serving Single Houses, EPA 2021' and any updated version of this document during the lifetime of the Plan

The subject site is located within Landscape Character Area 22 Quagmire and Owneyskeagh Rivers. Overall sensitivity defined as 'Medium' where some of the key characteristics and qualities of the landscape are sensitive to change.

The subject site is located within the 'Rural General' landscape designation (11.6.3.2 refers): Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes...it is important that



proposals are designated to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

- 5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005) These guidelines outline a key objective for the local planning system to deliver sustainable rural settlements. The guidelines differentiate between Urban Generated Housing and Rural Generated Housing. This distinction acknowledges the fact that demands for housing in rural areas arise in different circumstances and also differentiates between the development needed on rural areas to sustain rural communities and development tending to take place in the environs of villages, towns and cities which would be more appropriately located in these places.

For applications in areas under significant urban influence section 4.1 of the guidelines sets out how applicants should outline how their proposal is consistent with the rural settlement approach in the development plan and should supply supporting information where appropriate.

5.3. National Planning Framework

- 5.3.1. **National Policy Objective 15** Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- 5.3.2. **National Policy Objective 19** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4. **Natural Heritage Designations**

Site Code 000365 Special Area of Conservation: Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC approx. 400 metres from the subject site and over 1km away from the pNHA Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment.

## **5.5. Environmental Impact Assessment (EIA) Preliminary Examination**

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. There are three third party appeals, the appeals were submitted by:

- Tara Duggan, Tomies, Beaufort, Killarney, Co. Kerry.
- Cormac and Noelle Casey, Cools, Headford, Killarney.
- Myriam Dennehy, Cools, Headford, Killarney, Co. Kerry.

6.1.2. The main points may be summarised as follows.

#### **1. Rural settlement policy**

- Acknowledge that the County Development Plan has changed since the previous application 21/69 (ABP 310335-21). However, the national policy (the National Planning Framework) has not changed. Furthermore, the general thrust of the development plan is of discouraging rural housing, encouraging the use of existing derelict and underused properties and promoting the growth of small towns and villages (Para 5.1 refers). There is no evidence on the application that the applicants have attempted to identify a suitable existing property which could be renovated to suit their needs or an alternative site within a rural town or village.
- The applicants claim that as they have been living in the local community for in excess of seven years that they comply with the policy in regard to areas under urban influence. The appellants question whether it is legitimate to rely entirely on this one provision in isolation where the overall thrust of the policy is to direct people who wish to be part of the

rural community into small towns and villages, such as Barraduff and Glenflesk where planning permission was granted for circa 231 houses, in conjunction with the provision of proper facilities such as waste water treatment plant, in the village with a variety of house types.

- The connection shown to the rural area is tenuous and it is difficult to see how the applicants have established that they have an exceptional rural generated housing need. The applicants are not employed locally. The emphasis on remote working and EV ownership are not circumstances that would warrant an exceptional rural housing need. Reference to the definition of intrinsic part of the rural community (page 24) in the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and in this context think it difficult to see how the applicants could be said to comply with that definition.
- The applicants have previously tried to sell this site (see planning register reference 21/69). The appellants question the genuine need for a house.
- There are up to 13 houses within 250m of the subject site and considerably more just outside of that. Consider that this area is under significant urban influence. Refer to paragraph 5.3 which states that the plan seeks to protect areas that are under strong urban influence from unsustainable over development.
- The proposal does not comply with statutory government guidelines and does not comply with the National Planning Framework (National Policy Objective 19).

## 2. Design and scale

- KCDP 5-22 makes it an objective of the council to 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 these guidelines. The hipped roof and mock Georgian structures are not characteristic of the vehicular architecture of the local rural area. The existing early twentieth century house was atypical in the locality and should not be used as justification for the proposed house design.

- The proposed dwelling is large, with a deep plan and bulky heavily hipped roof, the appellants are concerned that the development will be overbearing and injurious to the visual amenity of the area.
- There are concerns about overlooking of the property on the opposite side of the laneway.
- The intention to host solar panels on the roof should not entitle applicants to disregard normal planning considerations.

### 3. Landscape and visual impact

- The siting of the substantial house and detached garage on a constrained site compromises the successful integration of the proposed development in its natural surroundings.
- Given the proximity of the development to its site boundaries a landscape plan should have been submitted to ensure that existing hedgerow and boundary trees (particularly the northern boundary) be taken into consideration and adequately protected from damage.
- The condition requiring a full set back of the entire front boundary will make it more difficult to integrate the property with its surroundings. Refers to design guide p. 28.

### 4. Site suitability for wastewater treatment

- Reliance is place on the site characterisation report submitted with the previous application (planning register reference 21/69) and excavations carried out in October 2020. In this application the Board inspector stated that on the basis of the information submitted it could not be concluded that the proposal would not be prejudicial to public health. No new information has been submitted to change the Board's position on this.
- The site characterisation report indicates that the proposed treatment unit will have a population equivalent of 6 persons. However, the house plans indicate 3 no. double rooms and 1 no. single room indicating a requirement for 7 persons.

- The percolation tests indicate that the water table is approximately 850mm below ground. It is for this reason that the assessor has had to propose a treatment system and sand polishing filter which is generally used in sites where percolation is difficult and in this case where the site is very small.
  - There is an extensive amount of water ponding on the site and a lot of rush on the site (photographs attached stated as being taken March 2023). This is concerning given the proposed DWWTS is located high up in the ground. The assessment does not note the fact that rush is present on the site.
  - Issues with existing WWTS in the area with the increase in rainfall. To permit an additional WWTS would be poor planning and would give rise to potential environmental issues in an already problematic area.
  - The applicants engineer which provides little in the way of 'further information' and fails to meet the expectations set out in the development plan (page 251) that state: "the provision of on-site wastewater treatment systems to serve new one-off rural housing must be carefully considered as these systems place significant pressure on water quality".
  - 60m east of the subject site is a natural spring well and to the north there is extensive bog wet land area and forestry which was recently harvested.
  - In August 2020 Irish Rail had to suspend services for several hours due to flooding and debris, originating from the bog/wetland area, washing over the line immediately north of the subject site.
5. Others - Issuing relating to defects/shortfalls in application documentation and recovery of costs
- No landscaping proposal has been submitted to indicate screening of nearby properties.
  - No indication of the sight distances at the proposed site entrance. No information provided in respect to the required relocation and

consultation with Irish Rail in respect to the 'Slow-level crossing' sign in position immediately adjacent to the site gate.

- One appellant has raised an issue that they have been put to unnecessary expense by the lodgement of an appeal where a very similar application has previously been adjudicated by the Board (ABP-310335-21) and request that the Board will allow such recovery of costs in this instance.

## **6.2. Applicant Response**

The applicant has responded to the grounds of appeal and has included an individual response to each of the three appellant's concerns. In summary, the responses include:

- Providing further background to site ownership, previous planning history by different applicant's and reason for making the subject application due to changes in rural settlement policy within the current development plan. Supplementary information has been submitted to demonstrate how the applicants are an intrinsic part of the rural community.
- Have explored the option of renovating a derelict house but no one has been open to selling any derelict structure.
- It is put forward that the road assessment and site assessment in relation to wastewater treatment system have already been dealt with in planning register reference 21/69. It is submitted that as the proposed house type, site assessment and sight lines are similar to the previous application "...whereby the didn't pose a difficulty the only outstanding item is the applicants need to live in the area".
- Letter from consulting engineer submitted stating that the onsite wastewater treatment designed for the development is in accordance with the recommendation of the EPA Code of Practice.
- The applicants prefer the house to have a hipped style roof in order to locate PV solar panels on the south/southeast side of the house.

- Submits that the style of the house incorporating a hipped roof is widespread in traditional medium to large size farmhouses throughout the country. The proposed house will not look obtrusive taken in context with the boundary teres which are in excess of 25m high. Notwithstanding, if the hipped roof is considered not to be acceptable the applicant would accept a condition requiring the roof to be changed to a gable style roof.

### **6.3. Planning Authority Response**

- No specific comments to make. The issues raised in the appeal were addressed in the Planner's report.

### **6.4. Observations**

- None.

## **7.0 Assessment**

7.1. I consider the main issues in this appeal are as follows:

- Rural housing need and settlement policy
- Design, scale and visual impact (including impact on existing landscape)
- Site suitability for proposed wastewater treatment
- Miscellaneous

### **7.2. Rural housing need and settlement policy**

7.2.1. The proposed site is located in a rural area defined as under urban influence. As such, applicants are required to satisfy the planning authority that their proposal constitutes an exceptional rural generated housing need based on their social or economic links to a particular local rural area. In this regard they must demonstrate compliance with one of the categories of housing need as set out in policy objective KCDP 5-15.

7.2.2. I consider it important in undertaking the assessment of 'exceptional rural generated housing need' to have regard to the five principles that provide the framework for the policies relating to the sustainable development of rural County Kerry, as outlined in

section 5.0 of this report, these principles include a focus on supporting rural communities centred on a network of rural village settlements and the principle of transitioning to a low carbon and climate resilient society and recognition of the necessary consideration of the spatial pattern of development focusing on elimination of unnecessary trips and more efficient use of resources.

- 7.2.3. The documentation submitted with the application, including the ‘Supplementary Information’ form, and appeal documentation indicates that the applicants have lived in Knockanes approximately 2km from the subject site for ten years (since 2013) and, therefore, the applicants contend they comply with Objective KCDP 5-15 (d).
- 7.2.4. The planning authority considered in the planner’s report that the applicants meet the exceptional rural generated housing need test as the applicants “...have lived in the area for over ten years” and the dwelling will be their permanent place of residence. I note documentary evidence has been submitted to support these statements, i.e., copy of lease, letter from the landlord (I note the landlord’s name is different to that on the copy of the lease agreement) and copies of utility bills. The appeal response cover letter includes the Eircode of the applicants rented house, but I highlight to the Board that site location map B KY70667F as referenced in letter has not been attached.
- 7.2.5. On the basis of the information provided, I agree with the planning authority’s assessment, noting that the applicants are currently renting and do not own a permanent house, and consider that the applicant has provided evidence to substantiate their compliance with criteria for social and housing need for permanent occupation under Objective KCDP 5-15 (d).
- 7.2.6. The appellants have raised the question in their submission whether it is legitimate to rely entirely on this one provision, i.e., compliance with the category of rural housing need, in isolation where the overall thrust of the policy is to direct people who wish to be part of the rural community into small towns and villages. I agree with the appellants in that there appears to be some internal conflict in terms of the development plan policy itself and the broad criteria to demonstrate exceptional rural generated housing need, particularly, in light of the development plan’s recognition of the requirement to transition to a low carbon and climate resilient society and the role of the spatial pattern development in achieving this transition. In response to the



appellants question, I am of the opinion that the development plan importantly identifies that the key challenge in these rural areas under urban influence 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. Therefore, I am of the view that the determination of whether a reasonable balance would be achieved in this rural area under urban influence is whether the demand for a residential dwelling meets the normal planning and environmental criteria having regard to its impact and, taking into consideration, the wider impact of the pattern of development associated with one-off housing on the climate and the environment.

- 7.2.7. I shall, therefore, assess the application focusing on the substantive issues that will determine whether or not permission can be recommended having regard to the development plan, these issues are largely based on the grounds of appeal as addressed separately below.

**7.3. Design, scale and visual/residential amenity impact (including impact on existing landscape)**

- 7.3.1. There are two landscape designations for the county, as summarised in Section 5.0, and the landscape in which the site is located within the area defined as 'Rural General'. In the preparation of landscape designations for the County the planning authority, as stated development plan, has had regard to the Landscape Review of County Kerry which outlines the quality of a landscape itself and also considers the level of existing development and the ability of the landscape to absorb further development without altering it to an unacceptable degree. The subject site sits within landscape character area 'Area 22 Quagmire and Owneyskeagh Rivers' in the Landscape Review as contained in Volume One (Appendices) of the Kerry County Development Plan 2022-2028 (pages 258-259). The landform of the area is described in the Landscape Review as focused on the rivers that feed the River Flesk in the southwestern corner of the area. The overall landscape sensitivity is identified as Medium, which is defined as some of the key characteristics and qualities of the landscape are sensitive to change.
- 7.3.2. The surrounding area of the subject site has an attractive visual quality defined by the railway crossing, the associated buildings addressing the laneway and the

narrow tree and hedgerow lined laneway itself as you approach from the south off the R570.

- 7.3.3. The subject site benefits from mature trees along its boundaries which would help to assimilate a structure into the landscape. I note that a landscape plan is included on the site layout plan (Drawing no. 22/010/J01/P03 submitted on 2 February 2023). The appellants have raised concerns that given the proximity of the proposed development to its site boundaries that the existing hedgerow and boundary trees request that these are taken into consideration and adequately protected from damage. Instead, the appellant highlights that the planning authority have attached a condition to remove the 'existing roadside boundary fence' and a 'new front boundary fence' shall be set back from the edge of the public road by 2.4m. The reason for this condition is stated as being in the interest of visual amenity and traffic safety.
- 7.3.4. Taking into account the existing hedgerow, trees and drainage ditch running along the roadside boundary of the subject site I am of the opinion that such works necessary to comply with same will be significant, including design considerations in respect to the drainage in the ditch, the revised road edge and the subsequent repositioning of the proposed driveway /building footprint to accommodate this set back and ultimately a reduction in the site area available for the proposed domestic wastewater treatment system (DWWTS). The issue relating to the DWWTS will be addressed in section 7.4 separately.
- 7.3.5. I agree with the appellants that the required removal and set back of the roadside boundary would not help to integrate the proposed structure and would negatively impact on the established visual amenities of the area. Furthermore, I agree with the appellants that the proposed development, including proposed wastewater treatment system (DWWTS), is in close proximity to the shared boundary. Given the reliance on these existing trees and hedgerows to integrate the proposed new building into the landscape I consider that the further information in respect to the existing trees in terms of their canopy spread and measures to protect these trees could possibly be addressed by way of a condition. Notwithstanding, I am of the opinion that details of the canopy spread in respect to the proposed position of the DWWTS is critical given the potential that tree roots may lead to preferential flow paths (PFPs). This issue will be addressed separately in section 7.4.

- 7.3.6. In terms of the proposed dwelling design the applicants have selected a hipped style roof for the proposed two dwelling (219 sq. metres gross floor space) and detached garage (30 sq. metres gross floor space). It is put forward by the applicants that this design allows for the installation of 12 no. PV solar panels on the south/southeast side of the house. In addition, it is stated that the hipped style house is similar to the existing two storey house located c. 30m to the north of the subject site. According to one of the appellants the existing two storey house dates back to the early twentieth century and such a building would be atypical in the locality. As such, they put forward that the existing hipped roof building can not be used to justify the heavily hipped roof proposed.
- 7.3.7. I am of the view that the existing two storey dwelling acts as a landmark building, in terms of its atypical design and its former association with the railway line. I agree with the appellants, in that, given the uniqueness of this context it would be inappropriate to rely on this structure as justification for the proposed design of the new two storey dwelling. I consider the proposed measures to add solar PV panels for environmental sustainability in themselves not sufficient to justify the excessive roof profile. The design guide sets out many alternative considerations that could be incorporated into the design to achieve energy efficiency and environmental sustainability. Therefore, I am of the opinion that the proposed design by reason of its deep plan will result in a hipped roof of excessive height, without any chimneys or other detailing to provide relief and break up its mass. As such the proposed development by reason of its design, bulk in scale and massing, which would be further exaggerated by the extreme removal and set back of the roadside boundary, would be not comply with the design guidance provided in the rural design guidelines and as such would be contrary to objective KCDP 5-22. I consider that refusal is warranted.
- 7.3.8. The appellants have raised concerns about overlooking from the proposed development. I would not agree that the proposed development would give rise to any significant levels of overlooking that would amount to undue loss of privacy given the distances involved. The visual impact has been addressed above. It is considered that the proposed development would not give rise to a serious injury to the established residential amenities of the appellant's property.

#### **7.4. Site suitability for proposed wastewater treatment**

- 7.4.1. The proposed development would be serviced by a private wastewater treatment system and polishing filter (DWWTS). I note that the Site Characterisation Form (SCF) relies on the trail hole and percolation tests undertaken for the previous application planning authority register reference 21/69, dated respectfully as 29 October 2020 and 4 November 2020, as carried out by at that time and signed off again for this subject application by the same site assessor. The applicants in their response to the appeal put forward that the site assessment in relation to wastewater treatment system (plus design and road assessment) have already been dealt with in Planning Reg. No 21/69 and submit that as their application is similar to the previous application these issues do not need to be revisited. It is suggested by the applicants that the compliance with the rural settlement strategy is the only outstanding item. I do not agree with the applicants in this respect and issues relating to design, which is completely different to that proposed previously, and issues relating to conditions addressing sightline issues are addressed above in section 7.3. For clarity, I highlight to the Board with respect to the site assessment of the previous application the planning inspector for the Board noted in their recommendation for refusal of planning permission, as detailed in section 4.0, that the 'issue of flood and pollution risk has not been resolved and based on the details submitted it cannot be determined that the proposed development would not be prejudicial to public health'.
- 7.4.2. The SCF identifies potential site restrictions including the site area available (0.18ha) and the design proposed for the treatment system. It was noted, during my site inspection that there was substantial rush growth, which would be indicative of poor drainage characteristics. My findings are at variance to that of the on-site assessment (section 3.0 of the SCF) submitted with the application which states that the ground conditions are generally dry and solid underfoot and that there was no surface water ponding and no vegetation indicators.
- 7.4.3. The SCF states that ground water flow is west to east and the water table is at 0.85m below ground level. Silt and silt and clay subsoils and bedrock not encountered. A T value of 41.11 and P test value of 27.86 was found.
- 7.4.4. I note that the third-party appellants raise concerns regarding the potential for flooding on the site and given the high-water table the potential pollution risk arising

in the event of floodwater or groundwater inundation of the wastewater treatment system as a significant issue, these are as per their previous concerns with respect to planning register reference 21/69 (ABP-310335-21). Such concerns are further noteworthy in the context of the restricted size of the site and the high-water table.

- 7.4.5. Table 6.3 of the EPA Code of Practice: Domestic Wastewater Treatment System (Population Equivalent <10) (EPA CoP) requires a minimum unsaturated soil and/or subsoil depth of 0.9 in areas determined as GWPR R1 when proposing to use polishing filters following secondary systems. The subject site does not meet these minimum standards and as such a refusal is warranted.
- 7.4.6. I note that the SAU sought further information in relation to the size and design of the gravel distribution layer underlying the Sandcel system. The applicants submitted a letter from consultant engineer which states: - "I can confirm that the gravel distribution layer underlying the Sandcel system has been sized and designed in accordance with Table 10.1 of the EPA Code of Practice Domestic Wastewater Treatment System (Population Equivalent <10)". The Tricel Site Recommendation Report accompanying the SCF notes that the gravel distribution layer must be 300mm thick and 90 sq. metres based on a population of 6 and the percolation values of 41-50. Notwithstanding the statement from the consultant engineer I note that no dimensions are shown on the site layout plan (02230\_01) submitted with the SCF of the polishing filter to confirm that the required 90sq .m is achievable on the site taking into account necessary separation distances. Furthermore, site section drawings submitted (02330-02) indicates a gravel distribution layer at 6mx6m (36 sq. m) which is significantly less than the required 90sq. m. The viability of the proposed wastewater treatment system is, therefore, questionable and I consider that the information provided in the application is inadequate to make a determination on this issue.
- 7.4.7. In conclusion, given the high-water table, poor percolation characteristics on the site and the direction of groundwater flow, it is considered that the proposed DWWTS poses a pollution risk. It is considered that the proposed development would therefore be prejudicial to public health. It is considered that the proposed development should be refused on these grounds.

## 7.5. Miscellaneous

- 7.5.1. One of the appellants have raised issues relating to the documents lodged with the application. They state that no landscaping proposal has been submitted. However, I would draw the Board's attention to the landscaping legend included on the Site Layout Plan (22/010/J01/P03) submitted to the planning authority on the 2 February 2023 with details of planting proposed and timescale for implementation for the landscape work. The appellant also has raised an issue that sight distances have not been indicated and the proposed site entrance. The submitted Site Layout Plan as referenced indicates a 75m sight distance southwards and 74m distance northwards taken approximately 2.4m from road edge. Impacts on the landscape and condition to remove the existing front roadside boundary to provide a setback addressed in section 7.3 please refer. I do agree with the appellants that no information has been submitted in respect to the required relocation of the 'Slow-level crossing sign' and if the Board is minded to grant permission, I consider that the detail of same could be subject to condition.
- 7.5.2. One appellant has raised an issue that they have been put to unnecessary expense by the lodgement of an appeal where a very similar application has previously been adjudicated by the Board (ABP-310335-21) and request that the Board will allow such recovery of costs in this instance.
- 7.5.3. The relevant provisions are found under section 145 of the Planning and Development Act 2000, as amended, and note that the Board may if it so thinks proper direct the planning authority to pay to the appellant and the Board a compensatory sum, in its absolute discretion, for the expenses incurred in relation to the appeal. Notwithstanding that the application is for the same type of development (a house and wastewater treatment system) as was previously adjudicated by the planning authority and the Board (see section 4.0), in this instance not only are the applicants different but also a completely different house type has been proposed to that previously. Given these circumstances I would not agree with the appellant in respect to the recovery of costs.

## **8.0 Appropriate Assessment**

- 8.1. On the issue of appropriate assessment and in terms of identification of the European Sites which could potentially be affected, I note that the Killarney National

Park Macgillycuddy's Reeks and Caragh Catchment SAC (Site Code 000365) is within 400m to the east of the subject site.

- 8.2. Given the small scale and nature of the development and the absence of any indication of a hydrological link to the European Sites it is considered that no appropriate assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on any European sites and Appropriate Assessment is not therefore required.

## 9.0 Recommendation

- 9.1. It is recommendation that planning permission be refused for the reasons and considerations set out below:

## 10.0 Reasons and Considerations

1.	It is considered that the area of the site is not suitable for the disposal of effluent due to the high water table, the soil conditions and evidence of ponding and rush growth on the site, the Board is not satisfied on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on-site notwithstanding the proposed use of a tertiary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.
2.	It is considered that, the proposed development by reason of its deep plan with a hipped roof of excessive height, bulk in scale and massing, would not comply with the design guidance provided in the rural design guidelines contrary to objective KCDP 5-22 of the Kerry County Development Plan 2022-2028 and would, therefore, be visually obtrusive in this rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3.	Taken in conjunction with existing development in the vicinity, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and

	would contravene the policy of the planning authority, as expressed in the current Development Plan, to direct residential development to serviced centres which policy is considered to be reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
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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.

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Claire McVeigh  
Planning Inspector

19 February 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	317521-23			
<b>Proposed Development Summary</b>	Construct a house and garage served by wastewater treatment system and polishing filter.			
<b>Development Address</b>	Cools, Headford, Killarney, Co. Kerry.			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓	
		<b>No</b>		
<b>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?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>	✓		Proceed to Q.3	
<b>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]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>	✓	Class/Threshold: Part 2 Class 10 (b) Construction of more than 500 dwelling units.		Proceed to Q.4

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

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Form 2

### EIA Preliminary Examination

An Bord Pleanála Case Reference	317521-23	
Proposed Development Summary	Construct a house and garage served by wastewater treatment system and polishing filter.	
Development Address	Cools, Headford, Killarney, Co. Kerry	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for the construction of a one-off rural dwelling house with wastewater treatment system and polishing filter.</p> <p>No significant waste, emissions or pollutants are likely.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The size of the proposed development is notably below the mandatory thresholds in respect of a Class 10 Infrastructure Projects of the Planning and Development Regulations 2001 as amended.</p> <p>There is no real likelihood of significant cumulative considerations having regard to other existing and/or permitted projects in the adjoining area.</p>	No
Location of the Development	The application site is not located in or immediately adjacent to a European site. The closest European	No

<p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>site is the Killarney National Park Macgillycuddy's Reeks and Caragh Catchment SAC (Site Code 000365) located within 400m to the east of the subject site.</p> <p>There are no ecological sensitive locations in the vicinity of the site.</p> <p>It is considered that, having regard to the limited nature and scale of the development, there is no real likelihood of significant effect on other significant environmental sensitivities in the area.</p>	
<p style="text-align: center;"><b>Conclusion</b></p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DP/ADP:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)