



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318272-23

<b>Development</b>	Construction of a dormer bungalow on site no. 15.
<b>Location</b>	Groin, Killorglin, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	983065
<b>Applicant(s)</b>	Siveen Construction
<b>Type of Application</b>	Approval.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Siveen Construction (Cherryhill Developments Limited).
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	9 <sup>th</sup> January 2023.
<b>Inspector</b>	Niall Sheehan

## **1.0 Site Location and Description**

- 1.1. Appeal site is located in the townland of Groin, c.2km to the south east of Killorglin town off the L-4010 within an existing housing development of 18 no. detached houses served by a single access road. The plot is to the north of No.14 and to the south of the public green area. A footpath, streetlights and public water mains serve the development. The site is surrounded by one off houses on partly serviced plots (public water mains and footpaths), the majority of which are dormer dwellinghouses. The plot backs onto a drainage ditch with agricultural lands to the opposite side. The site area measures 0.33acres/0.134ha overall.

## **2.0 Proposed Development**

- 2.1. Subject Application seeks Planning Approval on Site No.15 for the following:
- Proposed dormer bungalow measuring 2.9m high to eaves, 6.644m high to ridge and 121.7sq.m in floorarea;
  - Proposed onsite tertiary wastewater treatment system including infiltration/treatment area;
  - The original outline planning permission relating to the site was reg. ref. 97/1538.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Planning Application 98/3065

Further Information was requested on the 16/02/1999 and reads as follows (as summarised):

‘You are requested to submit a Site Layout Map showing existing services map onsite. A number of conditions relating to the grant of permission for site development works (planning reference 653/98) for the overall development remain unfulfilled. No development can commence on any individual site, until compliance is guaranteed on these conditions’ (compliances have since been agreed).

Further Information was responded to on the 08/09/2023. It is noted that the 6 month timeframe for response did not exist in 1999 under previous iterations of the Local Government (Planning and Development) Act 1963 and the Local Government (Planning and Development) Regulations 1994.

Kerry County Council recommended refusal on the 05/10/2023 for the following stated reasons (as summarised):

1. The outline permission pertaining to this site Planning Permission Reg. Ref. 97/1538 expired on the 08/02/2003. The planning authority is therefore precluded from granting permission.
2. The Planning Authority is not satisfied that a rural housing need has been demonstrated in accordance with Objective KCDP 5-15 Rural Settlement Policy of the County Development Plan 2022-2028 having regard to the location in a Rural Area under Urban Influence.

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

#### **3.2.1. Planner's Report:**

The associated outline planning permission reg. ref. 97/1538 has now expired therefore it is not possible to construct the proposed dwellinghouse as part of this approval application within the time frame of the outline permission. A refusal on these grounds is therefore recommended.

The land at this location is now designated as a Rural Area Under Urban Influence as per the KCDP 2022-2028. Further Information was requested of the applicant Siveen Construction now referred to as Cherryhill Development Limited mainly in relation not site development works on the 16/02/1999. Response to FI states that plot was sold to Stephen and Renee Clifford who subsequently had obtained a dwellinghouse elsewhere and their daughter Sharon Clifford would be the occupant of the proposed dwellinghouse.

The information submitted in lieu of rural housing need for Sharon Clifford is not adequate to show full compliance with rural housing policy for this area.

A refusal of approval is therefore recommended.

### 3.2.2. Other Technical Reports

Roads: Site located within development served by access road off local county road. Entrance to site indicated at location of an existing lighting pole. Recommend clarification of further information be requested to address the aforementioned.

### 3.3. Prescribed Bodies

Site Assessment Unit – No observations to make;

Environment Section – No observations to make.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

### Wider Development

Reg. Ref. 97/1538, Outline permission for 16 houses and service road. Granted Conditional Permission. Expiry date 08/02/2003. (Cherryhill Limited); (18 no. conditions attached, no time limited stipulated)

Reg. Ref. 98/653. Construction of a service road, footpaths, services, landscaping and ancillary works. Granted Conditional Permission on the 15/05/1998. (Cherryhill Limited);

Reg. Ref.: 081529, Retain service road, footpaths and boundaries of Sites No.'s 2 – 16 as constructed. Granted Conditional Permission (Cherryhill Limited);

Condition No.2 of above stipulates that Site No.15, the subject appeal site, be absorbed as part of public open space with that adjacent to the north.

### Application Site (No.15)

Reg. Ref. 07/1098, Construct a dormer dwellinghouse, garage, wastewater treatment unit, percolation area and associated site works. Refused for following reasons (as summarised) (Geoffrey Mahony).

1. Not satisfied from information provided effluent arising could be adequately treated and disposed of onsite. Prejudicial to public health.
2. Overconcentration of individual wastewater treatment systems within 500m radius  
Not satisfied effluent arising would not adversely affect ground water;
3. Site area significantly less than 0.2ha. which is minimum for residential development in un-serviced rural areas. Proposed development would materially contravene development management standards set.

## **5.0 Policy Context**

### **5.1. Legislation**

Outline Planning Permission and request for Further Information on this approval application were assessed by the Planning Authority under the 1994 Planning and Development Regulations. Please see summary of relevant article of same and also other relevant legislation;

Local Government (Planning and Development Regulations 1994)

Article 33

(1) Where a planning authority receive a planning application they may, by notice in writing, require the applicant—

(a) to submit any further information (including any plans, maps or drawings, or any information as to any estate or interest in or right over land) which they consider necessary to enable them to deal with the application;

(b) to produce any evidence which they may reasonably require to verify any particulars or information given in or in relation to the application;

(2) A planning authority shall not require an applicant who has complied with a requirement under sub-article (1) to submit any further information, particulars or evidence save as may be reasonably necessary to clarify the matters dealt with in the

applicant's response to the said requirement or to enable them to be considered or assessed.

(3) Where there is a failure or refusal to comply with a requirement under any of the foregoing sub-articles within one month of such requirement, the planning authority may, if they think fit, determine the application in the absence of the information or evidence specified in the requirement.

Local Government (Planning and Development Act 1992);

Article 16

(1) Where the Board is of the opinion that an appeal, or, a planning application to which an appeal relates, has been abandoned, the Board may serve on the person who made the appeal or application, as may be appropriate, a notice stating the fact and requiring that person within a period specified in the notice (being a period of not less than fourteen or more than twenty eight days beginning on the date of service of the notice) to make to the Board a submission in writing as to why the appeal or application, as the case may be should not be regarded as having been withdrawn.

Planning and Development Act 2000 (as amended and consolidated);

Section 36.— (3) (a) Where outline permission has been granted by a planning authority, any subsequent application for permission must be made not later than 3 years beginning on the date of the grant of outline permission, or such longer period, not exceeding 5 years, as may be specified by the planning authority.

(b) The outline permission shall cease to have effect at the end of the period referred to in *paragraph (a)* unless the subsequent application for permission is made within that period.

Planning and Development Regulations 2001 (as amended and consolidated)

(Transitional Provisions)

‘(1) Subject to sub-articles (2) and (3), the provisions of the Local Government (Planning and Development) Acts, 1963 to 1999, and the Local Government (Planning and Development) Regulations, 1994 to 2001 shall continue to apply to any valid application for permission received by a planning authority before 11 March, 2002, and any appeal, decision or determination made or to be made in respect of such planning application or in respect of a decision on such application, notwithstanding the repeal of such provisions or the revocation of such Regulations’.

## **5.2. National Policy**

Sustainable Rural Housing Guidelines for Planning Authorities (2005) (as summarised)

‘Rural Area Under Urban Influence’

The key development plan objectives in these areas should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand direct urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan. In addition policies will also normally include references to:

The types of situations considered as constituting rural generated housing. (See also Section 3.2.2);

- The criteria that will be applied by the planning authority generally in assessing rural generated housing proposals, e.g. in relation to evidence of an applicant’s links in the area in question, and;
- The measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continues to meet the requirements for which it was permitted.

Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)

Section 5.3.3 Public Open Space (as summarised)

All residential developments are required to make provision for a reasonable quantum of public open space.

The public open spaces should also form an integral part of the design and layout of a development and provide a connected hierarchy of spaces, with suitable landscape features, including seating and provision for children's play.

The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of the net site area and not more than a minimum of 15% of the net site area save in exceptional circumstances.

The minimum requirement should be justified taking into account existing public open space provision in the area and broader nature conservation and environmental considerations.

In some circumstances a planning authority might decide to set aside (in part or whole) the public open space requirement arising under the development plan. This can occur in cases where the planning authority considers it unfeasible, due to site constraints or other factors to locate all of the openspace on site.

### **5.3. Development Plan**

Kerry County Development Plan 2022-2028

Section 5.3 Planning for the Future Growth and Development of Rural Areas

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.

Section 5.5 Rural Housing

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 5-18 Give favourable consideration to the sustainable development of permanent places of residence on vacant sites within unfinished developments where services have already been completed to the satisfaction of the local authority.

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.

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:

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.

#### Sub-Section 11.6.3 Landscape Designations

No.2 Rural General It is important that development in all areas be integrated into its surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Development in areas outside of designated areas, 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.

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.

## Section 13.0 Water & Waste Management

Sub-Section 13.2.1.3 Wastewater Treatment Systems and Private Wells Many private wells are at risk of contamination from sources such as wastewater treatments systems. Recommended separation distances are specified in Table B.3 of the EPA Code of Practice. Distances may be increased where the bedrock is shallow, preferential flow paths are present or the effluent and bacteria enter the bedrock rapidly.

KCDP 13-10 Ensure that all wastewater treatment systems for single houses are designed, constructed, installed and maintained in accordance with the manufacturers guidelines and the E.P.A. Publication 'Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses" or any amending/replacement guidance or standards.

KCDP 13-19 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, and are maintained in accordance with approved manufacturer's specifications and subject to compliance with the Water Framework Directive, the Habitats and Shellfish Waters Directives and relevant Pollution Reduction Programmes.

## Volume Six: 1 Development Management Standards and Guidelines

### 1.0 Development Management Standards

#### 1.5.4.4 Public Open Space

- Public open space should be provided at a minimum rate of 15% of total site area. The open space should be designed to complement the residential layout and be informally supervised by residents. The spaces should generally be centrally

located within groupings, and be visually and functionally accessible, of a suitable gradient, useable and overlooked by a maximum number of dwellings. Incidental pieces of unusable land shall not be considered to fulfil or partially fulfil the 15% requirement; for example, narrow tracts of open space, which are difficult to manage, will not be acceptable.

- In brownfield sites or infill sites, a minimum of 10% may be provided as public open space. Residential developments of 5 units or less may be exempt from the 15% open space provision on greenfield sites. The Council will determine on a case-by-case basis where it is demonstrated that the function of the space is not viable.
- In addition to private open space, provided by the Developer, communal open space must also be provided for apartments, in accordance with the minimum standards set out in 'Sustainable Urban Housing, Design Standards for New Apartments' Section 28 Guidelines, (2020). Communal open space is for the exclusive use of the residents of the development and should be accessible, secure, and usable outdoor space which is inclusive and suitable for use by those with young children and for less mobile older persons.
- The Council shall require that areas dedicated for public open space in a planning application are transferred to the ownership of the Council where the development is taken in charge by the Council.

#### **5.4. Natural Heritage Designations**

Castlemaine Harbour SAC and pNHA, Site Code 00343 located c.400m due north east. The land drain to the rear of the site appears to flow into the Cottoners River which is part of the Castlemaine SAC (and also the pNHA).

Special Area of Conservation: Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC, Site Code 000365 c.4km due south west;

Lough Yganavan and Lough Nambrackdarrig SAC, Site Code 000370, c.3km due west

#### **5.5. EIA Screening**

Having regard to the location, nature and scale of the proposed development, separation from sensitive environmental receptors and no direct pathways, I am

satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case. See preliminary screening Form 2

## **6.0 The Appeal**

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

The grounds of appeal are submitted on behalf of the first party Siveen Construction (Cherryhill Limited). The main points made can be summarised as follows:

- Planning application 98/3065 was submitted on 18/12/1998 and further information was requested on the 16/02/1999, all prior to expiry of outline permission 97/1538 on 08/02/2003;
- Planning and Development Act 2000 (as amended and consolidated) does not preclude application being determined.
- Demonstrated compliance with rural housing need, (extensive information provided). Site also within walking distance of applicant's family home;
- Positive assessment for septic tank from Kerry County Council Site Assessment Unit;
- Planner's Report reference made to pole immediately at site entrance is incorrect;
- Retention reg. ref. 08/1529 granted with Condition No.2 stipulating Site No.15/appeal site be included in public open space despite not owned by developer and sold to third party at that stage;
- Decision to try add Site No.15 to the public open space was not based on any proper planning criteria and futile as developer had no control over this site;
- The addition of Site No.15 to the public open space left the applicants/appellants no option but to pursue the deferred approval application;
- Site redundant with no social value. If proposed dwellinghouse permitted on Site No.15, it will contribute towards overall finish of estate;
- Estate works almost complete, bond release imminent, TIC application to follow;

- Further information request for 98/3065 to encourage developer to complete estate works as part of planning application reg. ref. 98/653 for which are now complete and conditions in process of being discharged.
- Ask that consider approval further information response which if approved would afford opportunity to Sharon and Amy Clifford to get out of rented accommodation into their own house for first time.

## **6.2. Planning Authority Response**

Response received on the 9<sup>th</sup> of November 2023

- Outline planning permission reg. ref. 97/1538 expired on the 08/02/2023. Precluded from granting approval for the proposed development;
- The applicant Siveen Construction (Cherryhill Limited) cannot comply with Rural Housing Policy (demonstration of rural housing need) for this area designated as a Rural Area Under Urban Influence as per Kerry County Development Plan 2022-2028;
- The detail with respect to intended occupants of proposed dwellinghouse deemed insufficient to demonstrate rural housing need compliance with policy KCDP 5-15 (d);

## **7.0 Assessment**

### **7.1. Introduction**

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Procedures/Validity;
- Rural Housing Need;
- Access;
- Other;

## **7.2. Procedures/Validity**

7.2.1 I consider it useful to layout the application details (as summarised) in a sequential manner followed by my interpretation of legislation. This is as follows:

- Outline planning permission reg. ref. 97/1538 was granted on the 08/01/1998 which the expiry date was in 2003;
- Approval application 98/3065 was received on the 18/12/1998. This kept outline planning permission reg. ref. 97/1538 live at that particular time;
- Further Information was subsequently requested on the 16/02/1999 and submitted on the 08/09/2023 over twenty four years later;
- At the time of the further information request, the Local Government (Planning and Development Act 1992 and the Local Government (Planning and Development) Regulations 1994 were the principal legislation;
- The Planning and Development Regulations 2001 state that ‘subject to sub-articles (2) and (3), the provisions of the Local Government (Planning and Development) Acts, 1963 to 1999, and the Local Government (Planning and Development) Regulations, 1994 to 2001 shall continue to apply to any valid application for permission received by a planning authority before 11th March, 2002, and any appeal, decision or determination made or to be made in respect of such planning application or in respect of a decision on such application, notwithstanding the repeal of such provisions or the revocation of such regulations’;
- It was noteworthy that there was no withering timeframe (i.e six months with three month extension) for further information response in the 1992 Act, and the 1994 Regulations;
- I have referred to Section 16 of the Local Government (Planning and Development) Act 1992, however do not consider that this can be invoked at this time;
- The relevant provision is therefore Article 33(3) of the 1994 Planning and Development Regulations;
- In this instance, notwithstanding the time lag of over twenty four years between request and response and associated legislative policy and circumstantial

changes, the planning authority did not make the decision in the interim to deem withdrawn, and a further information response was submitted, hence the application is still live. Given the aforementioned, I am of the view that the planning authority cannot now deem withdrawn subsequent to further information response

- As summarised in 'Planning History', planning permission 08/1529 for retention of service roads, footpaths and boundaries of Sites No.'s 2 – 16 as constructed was granted on 22/08/2008. This included Condition No.2 regarding provision of Site No.15 as public open space in addition to that existing adjacent immediately to the north within 2 months. This decision or condition were not subject to appeal. There have therefore been significant and material changes in circumstances since the outline planning permission reg. ref. 97/1538 was granted and planning application for approval reg. ref. 98/3065 was lodged. This has not taken place as of yet. It is also noted that Site No.15 was sold by the developer prior to planning application 08/1529 being lodged.

7.2.2 Taking all of the aforementioned into consideration, I am of the view that the planning authority cannot deem the application withdrawn following subsequent to further information response.

### **7.3 Rural Housing Need**

7.3.1 For purposes of clarification, the original applicant as part of planning application 983065 was Siveen Construction, now known as Cherryhill Limited. The current site owners are Sharon Clifford's parent's Stephen and Renee Clifford who bought the site from Alma Healy c.2006/2007 who bought the site from Siveen Construction. Sharon Clifford has essentially stepped into the shoes of Cherryhill Limited for the purposes of attempting to demonstrate rural housing need as part of further information response.

7.3.2 The applicant has applied for a rural house under category (d) as a local rural person who has spent 'a substantial period of their lives (i.e., over seven years), living in the local rural area ... where they propose to build a first home for their permanent residence'.

7.3.3 The First Party set out the justification for providing a house at this location on the basis of a social and economic need to locate here. They submitted an affidavit (including attached documentation) outlining the following:

- Land Registry maps and documentation showing applicant's parent's ownership of appeal site;
- Applicant and daughter currently residing in rental accommodation the Killorglin area (urban, c.3km away);
- Applicant's parents live c.1km away in Annadale, Killorglin rural with extended family living in close proximity;
- Applicant and daughter attended primary and secondary school locally in Killorglin (applicant 1989-1997 and 1997-2000) and Milltown (daughter 2009-2017 and 2017-2022) respectively. Letters are provided from all schools for both parties. It is noteworthy that the applicant's current address (Killorglin Urban) was provided and not her parents address (Annadale).
- Applicant's daughter attending Kerry College in addition to Mid Kerry Veterinary Centre. Letter from Mid Kerry Veterinary Centre provided;
- Applicant self-employed and works from stable yard adjacent to parent's home providing livery, training horses and as a riding instructor. List of equine owners who aforementioned is provided for is given (signed and dated letters).

7.3.4 The affidavit does not state that the proposed dwellinghouse is for Sharon Clifford's first home for which is a requirement as per Policy Objective KCDP 5-15. It is however noted that this is referred to in the supporting appeal statement.

7.3.5 From the above, Sharon Clifford has demonstrated attendance of local schools for a period of eleven years, however the letter from the local primary school attended provides the applicants current address in Killorglin urban and not her stated home address/parent's current address in Annadale, Killorglin rural. The letter from the local secondary school attended provides an address in Annadale, Killorglin rural. Signed letters from equine owners (all dated 2023) who the applicant provides a livery service for, state the applicants address at Annadale, Killorglin rural.



- 7.3.6 In addition to the above, the supporting appeal statement refers to the proposed dwellinghouse providing the opportunity for the applicants (Sharon Clifford) to 'get out of rented accommodation and into their own house for the first time'.
- 7.3.7 Following assessment of the above, I consider that the applicant has at most provided evidence of residence in the rural area for a period of four years (three years for secondary school, and, one year for livery) and not the requisite period of seven years or greater, hence has not demonstrated adequate evidence to satisfy Objective KCDP 5-15 (d).
- 7.3.8 I am therefore not satisfied that the information provided forms a clear basis for compliance with rural housing policy set out in the Kerry County Development Plan 2022-2028 (falling short of necessary requirements) and consequently a need to live at this rural location. I am of the view that the applicant's housing needs could be met either within Killorglin town nearby or alternatively within another town, village or settlement proximate to the appeal site. While acknowledging the applicant's involvement in livery, the difference in distance from her current residence in Killorglin Urban to Annadale as opposed to Groin to Annadale is not significantly greater.
- 7.3.9 I consider that the applicant does not meet the requirements of the settlement policy as set out in Objective KCDP 5-15 (d) of the Kerry County Development Plan for rural housing in an area designated as a 'Rural Area Under Urban Influence'.
- 7.3.10 The proposed development is also contrary to the Sustainable Rural Housing guidelines as again it does not provide an adequate evidence based demonstration of rural housing need for provision of a dwellinghouse in a 'Rural Area Under Urban Influence'. Overall, in the absence of evidence to the contrary, I am of the view that proposed development would constitute urban generated rural housing, contribute towards a high density of rural housing, militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.

## **7.4 Access**

- 7.4.1 From my site visit, I observed an ESB services box and a streetlamp located to the north of the front site boundary c.2m inside the front boundary edge where it adjoins the kerb. As per a revised Site Layout Plan dated 29/05/2023 provided as part of

further information, the access is indicated towards the centre of the front boundary which corresponds with the onsite situation where there is a set of drop kerbs installed in same position. I assessed that sightlines on exiting the site would not be adversely affected by the ESB services box or the streetlight for which are located c.3m and 6m away respectively. With this in mind, I do not consider this to be an issue which would require to be addressed further.

## **7.5 Wastewater Treatment System**

7.5.1 From a site visit and desk assessment including a study of the Site Characterisation Form, I have outlined the following:

- The site has a moderate to slight fall from southern to northern side;
- Site is overgrown and unkempt with gorse growing throughout and is rough and undulating underfoot. The presence of Creeping Buttercup, Common Rush, Scotch Broom, Goat and Grey Willow trees to the northern western side was noted. The site was not particularly wet on the day of visit;
- There is a drainage ditch to the rear north western boundary which is approximately 11.7m from the proposed polishing filter (c.10m from both trial holes);
- The system proposed is a tertiary pumped 6 person equivalent mechanical unit with puraflo infiltration area laid on 24sq.m surface area of washed distribution gravel covered with greater than or equal to 0.3m topsoil);
- 2 no. trial holes were dug to 2.4m and 2.8m respectively with no watertable or mottling reported to either;
- The T-Value recorded is 17.86 while P-Value recorded is 18.28;
- The underlying groundwater body is Lake Muckross which is deemed 'High' or 'At Risk' (Regionally High Aquifer (Rg));

7.5.2 I note the following anomalies in the Site Characterisation Report are noted:

- Given the area is deemed as 'High' or 'At Risk' as per SCR (classified by GSI Ireland) the allocated ground water protection response should be reclassified as R1 and not R2<sup>2</sup> as per SCR (this represents a misclassification);

- Where a regionally important aquifer underlies the site, trial hole depth should be at least 3m to prove that existing vulnerability classification as provided is correct. It is noted that rock was encountered at a depth of 2.85m

- 7.5.3 With regard to density of development, the proposed dwellinghouse would be the 8<sup>th</sup> house within 1ha. (43 no. in 250m radius), all served by private wastewater treatment systems (WWTS) in an area of high groundwater vulnerability. Site area is 0.33ac./0.134ha.
- 7.5.4 EPA Code of Practice 2021 for Domestic Wastewater Treatment Systems states that ‘densities of domestic WWTS greater than 6 no. per hectare in areas of extreme or high vulnerability may mean a negative effect on ground water quality... and this is of particular importance in areas with high nitrate levels in groundwater, particularly within groundwater bodies at risk of failure to meet limits set out in the WFD classification of groundwater-body chemical status for nitrate. In such cases, a more detailed hydrogeological investigations by a specialist qualified person may be required to demonstrate whether the site is suitable for a DWWTS’.
- 7.5.5 The groundwater body underlying the site is of good status but deemed at potential risk of not achieving water framework directive objectives given pressures from both individual wastewater treatment systems and agriculture.
- 7.5.6 Given aforementioned pressures, mobility of nitrate in soils and the high vulnerability characteristics of the area, more detailed hydrogeological investigation of ground water and impacts from existing houses is required.
- 7.5.7 The Site Characterisation Report does not propose any specific detailed hydrogeological measures (notwithstanding proposed tertiary treatment with infiltration area) to overcome the high density of one off rural housing including individual wastewater treatment systems which exceeds the recommended number as per the EPA Code of Practice 2021, and also pressures from agriculture and nitrate mobility (in the area), and, the high vulnerability characteristics of the area.
- 7.5.8 I conclude, based on the material submitted in conjunction with my assessment, it has not been adequately demonstrated that the site is suitable for the safe disposal of domestic effluent. In the absence of such, it cannot be proven at this stage that the proposed development will not create a serious risk of ground water pollution and

resultant risk to public health. The proposed development does not resultantly comply with Objective KCDP 13-19 of the Kerry County Development Plan 2022-2028.

7.5.9 The inadequate demonstration for the safe disposal of domestic effluent onsite would constitute a **New Issue** in the consideration of this appeal.

7.5.10 In the event the Board are minded to consider a grant of planning permission in this case, it is considered that further information in relation to the risk to ground water and subsequent public health should be sought from the applicant.

## **7.6 Design**

7.6.1 The Dun An Óir estate mostly comprises of one and a half storey dwellinghouses (some containing dormer windows) which are positioned between the front and centre of the site. These are finished in render to walls, blue/black slates/tiles to roof and UPVC frame windows and doors. An identical type dwellinghouse is located directly across the road at No.4.

7.6.2 Overall, I consider that the proposed design including layout, scale, fenestration and finish initially submitted on the 18<sup>th</sup> of December 1998 is generally in keeping with the appearance of surrounding properties within the estate and the surrounding pattern of development to the local county road.

## **7.7 Residential Amenity**

7.7.1 Given proposed design, site surroundings and boundary treatments, I consider that there would be no significant overshadowing, loss of light, overbearing, overlooking or loss of privacy impacts to neighbouring properties resultant.

7.7.2 Although the wider development is located in the countryside outside an urban settlement given it forms a housing estate, the provision of adequate public openspace would still apply. In this instance the Sustainable Residential Developments in Urban Areas (updated 2020) seeks the provision of a minimum rate of 10%.

7.7.3 It is noteworthy, as per 'Planning History' that Condition No.2 of planning permission 08/1529 subsequent to the expiry of outline planning permission requested that Site

No.15 (0.118ha.) be absorbed into public open space (0.1088ha.). It is noted in the Planner's Report for same that the area of the wider development totalled 3.02ha including plots and public open space. whereas the area of the existing public open space provided only measured 0.1088ha. thereby falling significantly short of the then county development plan standards (Kerry County Development Plan 2003-2009 and Guidelines for Planning Authorities on Residential Density 1999).

- 7.7.4 In this instance the intention of Condition No.2 of 08/1529 was to create an overall total of public open space of c.0.23ha. (c.7.62%), significantly closer to the minimum standard of 10% (than previously existed). While c.7.62% was below the minimum County Development Plan standard, it was considered adequate at the time given the low density nature of the development (detached houses, all benefitting from front and rear garden areas).
- 7.7.5 The absorption of Site No.15 never took place as the site developer (same as outline and predecessor to current) sold the site to a third party (not the current owners) prior to planning application 08/1529 being made.
- 7.7.6 Notwithstanding site ownership issues and the overgrown, unkempt nature of the site which has not been used in a long time, I consider that Condition No.2 of planning permission 08/1529 has changed the status of the plot from the potential provision of dwellinghouse to the provision of public openspace. This condition was not subject of appeal and therefore still stands.
- 7.7.7 I also consider that the current public open space offering within the wider development falls significantly short of current minimum standards as per Section 1.5.4.4 Public Open Space of the current Kerry County Development Plan 2022-2028, and, the Sustainable Residential Development in Urban Areas 2020.
- 7.7.8 I therefore consider the loss of the site as potential public openspace would contravene the intention of Condition No.2 of planning permission 08/1529, and, also result in a continued failure to meet minimum public open space standards as per Section 1.5.4.4 Public Open Space of the Kerry County Development Plan 2022-2028, and, the Sustainable Residential Development in Urban Areas 2020.
- 7.7.9 In the intervening time of over twenty four years between further information request (16/02/1999) and response (08/09/2023), the status of the site changed from having

the benefit of outline consent for the development of a house, to the development of public open space.

## **7.8 Appropriate Assessment**

7.8.1 With regard to Appropriate Assessment, given a connection from a land drain running to the rear of the site which appears to flow into the Cottoners River c.400m to the north east (part of the Castlemaine Harbour SAC Site Code 00343 (qualifying interests both hydrogeological and terrestrial)), coupled with a high density of rural housing including individual wastewater treatment systems, significant pressures from agriculture, high vulnerability characteristics of the area in addition to the absence of a detailed site specific hydrogeological assessment (as part of the Site Characterisation Report), it is uncertain whether or not the proposed development would be likely to have significant effects either individually or in combination with any other plans or projects on the conservation objectives and sensitivities of this European Site. In the event of a decision to grant planning permission it is considered that further information on wastewater disposal would be required to satisfy these concerns.

The Lough Yganavan and Lough Nambrackdarrig SAC, Site Code 000370 is located c.3km to the west, and, the Killarney National Park and Macgillycuddy Reeks and Carragh River Catchment (Site Code 000365) is located c.4km to the south west. There are no direct or indirect connections to either European site, hence the proposed development would not be likely to have any significant effects either individually or in combination with any other plans or projects on the conservation objectives of either.

## **8.0 Recommendation**

I recommend that permission be refused for the reason stated below.

## 9.0 Reasons and Considerations

1. Condition No.2 of planning permission 08/1529 granted on the 19/08/2008 requires that Site No.15 be included in the adjacent area of existing public open space. Notwithstanding absence of compliance to date, the proposed development would preclude the achievement of an adequate level of public open space provision for this development in accordance with the requirements of the Kerry County Development Plan 2022-2028. The proposed development is therefore contrary to Section 1.5.4.4 Public Open Space of Volume 6 of the Kerry County Development Plan 2022-2028 and Policy and Objective 5.1 – Public Open Space of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) and the proper planning and sustainable development of the area.
2. Having regard to the location of the site within ‘Rural Area Under Urban Influence’ as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in April 2005 ,and, in an area where housing is restricted to persons demonstrating local need in accordance with the current Kerry County Development Plan 2022-2028, specifically Objective KCDP 5-15 which facilitates the provision of rural housing for local rural people building their first home in a ‘Rural Area Under Urban Influence’, taking into consideration the absence of satisfactory documentary evidence on the file outlining the applicant’s need to live in this rural area, and, whether or not this is their first home, the Board is not satisfied on this basis that the applicant has adequately demonstrated they would come within the scope of either social or economic housing need criteria as set out in the Guidelines, or, the Development Plan for a house at this location. The proposed development in the absence of any identified locally based need, would result in an unsustainable form of development exacerbating rural density of one-off rural houses, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and, would undermine the settlement strategy set out in the Development Plan. 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.



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Niall Sheehan  
Planning Inspector

8<sup>th</sup> March 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>318272-23</b>			
<b>Proposed Development Summary</b>	Construction of a dormer bungalow on site no. 15.			
<b>Development Address</b>	Groin, Killorglin, 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>	X	
		<b>No</b>	No further action required	
<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>	X		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 10, (b) (i)	Sub-Threshold	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	X	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

Inspector:   *Niall Grechan*   Date:   8<sup>th</sup> March 2024

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	318272-23	
<b>Proposed Development Summary</b>	Construction of a dormer bungalow on site no. 15.	
<b>Development Address</b>	Groin, Killorglin, Co. Kerry	
<p><b>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.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p>	Proposed dormer bungalow and associated wastewater treatment system, similar to surrounding.	No
<p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	Uncertain whether or not significant waste, emissions or pollutants resultant due to site and area specific circumstances and the absence of hydrogeological assessment as further set out in 'Location of the Development'	No
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	Proposed dormer bungalow and associated wastewater treatment system, similar to surrounding	No
<p>Are there significant cumulative considerations having regard to other existing</p>	High density of rural development including high concentration of individual wastewater treatment systems. Uncertain whether or not significant waste, emissions or pollutants resultant due to absence of hydrogeological assessment as further set out in 'Location of the Development'	No

and/or permitted projects?		
<p><b>Location of the Development</b></p> <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>Castlemaine Harbour SAC and pNHA, Site Code 00343 located c.400m due north east, linked through land drain running to rear of site appearing to flow into Cottoners River (part of above SAC). Further specific detailed hydrogeological assessment (as part of Site Characterisation Report) would ordinarily be required given land drain connection to river which is part of SAC and high density of rural development including individual wastewater treatment systems in event of more positive prognosis.</p> <p>Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC, Site Code 000365 c.4km due south west; Lough Yganavan and Lough Nambrackdarrig SAC, Site Code 000370, c.3km due west. No physical or hydrogeological connection to either of the above.</p> <p>No direct/indirect pathways to any other ecologically sensitive sites apart from Castlemaine Harbour SAC as set out above.</p>	Uncertain

<b>Conclusion</b>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>	<p><b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p> <p>As above, further assessment (detailed specific hydrogeological assessment) would be required given connection to Castlemaine Harbour SAC (in event of more positive prognosis).</p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p>EIAR required.</p>

Inspector: *Niall Buchanan*

Date: 8<sup>th</sup> March 2024

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

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

(only where Schedule 7A information or EIAR required)