



An
Bord
Pleanála

Inspector's Report ABP-319062-24

Development	Dwelling, garage and septic tank
Location	Liscahane, Ardfert, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	231125
Applicant(s)	John Kirby
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	John Kirby
Date of Site Inspection	9 th May, 2024
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located on the northern side of a local road approximately 1.5km south-east of Ardfert in County Kerry. The land at this location falls away from the public road. The site is in agricultural use as grassland. The main body of the site is located to the rear of an existing house fronting onto the public road. There are hedgerows along the northern, southern and western boundaries of this section of the site. There is another house to the east of this which is the applicant's father's house. The boundary between the rear garden of the appellant's parent's house and the site comprises a post and wire fence. The location for the proposed driveway into the site is between the two established residential properties. There is a planted boundary on the western side of this location. There are four houses immediately south-west of the proposed access road location and there are more detached houses to the north-east.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a dwelling and garage and the installation of a septic tank and percolation area. The proposed dwelling would be a four-bedroom bungalow with a stated floor area of 199.52 square metres. The garage would be a single-storey structure with a stated floor area of 21.2 square metres. The house would be served by the proposed septic tank system and by a public water supply. The proposed development would be located to the rear of an existing house which fronts onto the public road, with a driveway located between this and another established residential property to the east. The applicant is being gifted the 0.48 hectare site from his father.
- 2.2. Details submitted with the application included a Site Characterisation Form, Land Registry documentation, letters from a childcare provider and secondary school, and letters from the applicant's father relating to the deeds of the property and the applicant and his spouse's residency at his father's house.

3.0 Planning Authority Decision

3.1. Decision

On 23rd January, 2024, Kerry County Council decided to refuse permission for the proposed development for one reason relating to the proposal constituting back land development and the injury to residential amenities of properties in the vicinity, as well as the undesirable precedent that would be set for in-depth development in the rural area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the planning history of the site, development plan provisions, and reports received. It was considered that the applicant would comply with Rural Settlement policy. Reference was made to a previous decision relating to the site, to the strong pattern of ribbon development, and the back land nature of the proposed development leading to impact on residential amenity. A refusal of permission for one reason was recommended.

3.2.2. Other Technical Reports

The Municipal District Technician submitted that it appeared that sightlines meet required distances. Requirements relating to the entrance and road provisions were set out.

The Environment Section commented on the proposal for effluent treatment. It was noted that a site visit was not carried out. There was no objection to the proposal and conditions were recommended.

3.3. Third Party Observations

A submission in support of the application was received from Michael Healy-Rae TD.

4.0 Planning History

P.A. Ref. 23/757

Permission for a house, garage and septic tank system was refused in 2023 for one reason similar to that in the decision of the planning authority on the current application.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Rural Housing

The site is located in a designated Rural Area under Urban Influence.

The relevant objective is:

KCDP 5-15

In Rural Areas under Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, including their sons and daughters or a favoured niece/nephew where a farmer has no family of their own who wish to build a first home for their permanent residence on the family farm.
- b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent residence, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c) Other persons working full-time in farming or the marine sector for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent residence.

d) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent residence.

e) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family is both necessary and beneficial in their endeavours to live a full and confident life whilst managing such a condition and can further demonstrate that the requirement to live in such a location will facilitate a necessary process of advanced care planning by the applicants immediate family who reside in close proximity.

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

Landscape

The site is located within an area designated 'Rural General'. The Plan states:

"Notwithstanding the higher capacity of these areas to absorb development, 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. EIA Screening

Having regard to the nature, scale and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synopsised as follows:

- The applicants are from the area, live in the area, and work in Tralee and Listowel. Their children are in school in Ardfert.
- The site is perfect for this type of back land development. It is lower than surrounding front road properties. The house is low in height. There is mature hedging and trees around the site that would not be removed. The site access is existing so no disturbance would occur. The boundary wall was pulled towards the dwelling so that it would not interfere with privacy, light, etc.
- Reference is made to other two planning permissions issued in the wider area.

6.2. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

7.0 Assessment

7.1. Introduction

- 7.1.1. I consider that the principal planning issues for consideration in this application are the question of backland development and rural housing need.

7.2. The Question of Backland Development

- 7.2.1. The proposed development is in a rural area remote from serviced settlements. The established pattern of residential development in this area presents as ribbon development to the north of the local road and the proposal will add to this. The houses at this location are detached houses served by private wastewater treatment systems, each with expansive road frontage. The applicant seeks to add further to this unsustainable pattern of housing in the countryside but by seeking to site the proposed house behind established houses fronting onto the public road. As a result, not alone would the proposed house add to the disorderly spread of one-off houses in this rural area but it would add to it by seeking to densify in a most haphazard manner. The consequences of this form of development creates several likely problems which include significant potential to adversely impact on residential

amenity and by the creation of an undesirable precedent that would be set because it would likely encourage further development of this nature in the vicinity.

7.2.2. The siting of a proposed house to the rear of other houses in this location would create disturbance and nuisance with everyday use which would not be anticipated for residents of established one-off houses in the countryside. One can retain hedges, build walls, plant boundaries, etc. to mitigate overlooking and loss of privacy, however, the adverse impacts on residential amenity by way noise and nuisance arising from the occupancy of the house, works around and within the curtilage, vehicular movement, lighting, etc. would accrue. The provision of further effluent treatment systems and the precedent such development creates would pose a significant public health concern, in my opinion. The precedent for further development of this nature in the vicinity is of particular concern as permissions for houses on lands behind established houses will likely be pursued where there are gaps along the local road frontage between houses to allow for vehicular access. The more that development of this haphazard nature is permitted the more demands will follow for the unsustainable provision of public services. This brings with it demands for public lighting along the public road, public footpaths, seeking potential for collection of wastewater as the build-up of private wastewater treatment systems becomes a public health concern, traffic management along the local road where the maximum speed limit applies as the build-up of individual private accesses onto the road becomes a traffic safety concern, etc. Thus, the backland nature of the proposed development is clearly a haphazard form of residential development in this rural area, not alone for its impacts on properties forward of it in terms of adverse impacts on residential amenity but also for much wider sustainability issues.

7.2.3. In conclusion, the proposed development constitutes haphazard backland development that is contrary to proper planning and sustainable development of the area.

7.3. Rural Housing Need

7.3.1. The site is located in a designated Rural Area under Urban Influence in the Kerry County Development Plan 2022-2028. This is an area under significant development

pressure for one-off houses due to its proximity to the county town of Tralee, which is less than 9km to the south-east. The pressure is demonstrated by the extent of existing one-off houses along the road frontage at this location and in the wider environs.

7.3.2. The relevant objective in the Plan relating to the development of rural houses in such locations is Objective KCDP 5-15 as set out earlier in this report. The objective states that the applicant must satisfy the planning authority that their proposal constitutes an exceptional rural generated housing need based on their social and/or economic ties to a particular local area. The following is noted:

- The appellant is not a farmer.
- The appellant is not taking over the ownership and running of a farm.
- The appellant is not working full time in farming or the marine sector.
- The appellant is not known to have a lifelong or life limiting condition.

7.3.3. I note the Planner's report for the planning authority wherein it is stated that the applicant is the son of a landowner, his accommodation is rented, he grew up in Liscahane, and his parents' dwelling is adjacent to the site. From this the Planner concludes that the application would comply with the rural settlement policy as it relates to Rural Areas under Urban Influence.

7.3.4. I note from the details provided in the planning application and in the appeal to the Board that one could not reasonably determine that the appellant's application would constitute an 'exceptional' rural generated housing need. What is known from the appeal submission is that the appellant and his spouse work in Tralee and Listowel and their children are in national school in the village of Ardfert. From the application details it is noted that they reside in Listowel. The planning application form states that they rent accommodation. A letter with the application, signed by Thomas Kirby of Liscahane East, gives the Listowel address of the accommodation and states that the appellant's spouse has resided with her husband at that location since November 2022. Further details with the application include a letter from a secondary school in Tralee stating that the appellant was a full-time student at the school in the town.

Another letter from a childcare centre in the village of Ardfert refers to the attendance of a Brendan Kirby at the centre.

- 7.3.5. From the details above, I do not know how one could reasonably ascertain that the appellant meets with an exceptional rural generated housing need. Clearly the applicant / appellant has not demonstrated an exceptional rural generated housing need in this instance. One cannot gauge from the details that the appellant has social and / or economic links to this particular local rural area or that they are a person who has spent a substantial period of their lives (i.e. over seven years) living in this local rural area in which they propose to build a first home for their permanent residence.

7.4. Effluent Disposal

- 7.4.1. In my opinion, this is a significant planning and environmental issue arising from the proposed development. Notwithstanding percolation test results from this site attaining T-values in the mid-30s, my concern is based primarily upon the proliferation of private effluent treatment systems within a confined area where there are threats to groundwater. All of the houses in the immediate vicinity of this site are likely being serviced by individual private effluent treatment systems. Clearly, the proposal would result in increasing the effluent load and the consequent pressure on groundwater quality at this location. A perusal of contemporary mapping of this area, showing in particular the extent of one-off housing along this local road and a short distance to the north-east, demonstrates the pressure this area is under from the proliferation of private effluent treatment systems. I further note the constraints that would be caused for the septic tank system serving the applicant's parent's house, due to the siting of the proposed house a short distance behind it and its containment within a narrow strip of rear garden space. There is no understanding of the location of any percolation area as part of the existing septic tank system.

In conclusion, I submit that there is a significant threat to groundwater quality at this location. It is unsustainable to continue to allow the proliferation of septic tanks and

other effluent treatment systems at this location discharging final effluent to groundwater.

Screening for Appropriate Assessment

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in a rural area south-east of the village of Ardfert at significant distances from European sites, the nearest being Akeragh, Banna and Barrow Harbour Special Area of Conservation (Site Code: 000332) some 4km west of Ardfert.

The proposed development comprises the construction of a house and the installation of a septic tank system. No nature conservation concerns were raised in the decision of the planning authority or in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small scale and nature of the proposed development,
- The location and distance from the nearest European sites and lack of known connections thereto.

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.0 Recommendation

8.1. I recommend that permission is refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the pattern of existing residential development and the siting of the proposed house to the rear of established residential properties, it is considered that the proposed development would constitute a piecemeal, disorderly, haphazard form of backland development in a remote rural area, that would be likely to seriously injure the amenities and depreciate the value of adjoining residential properties and would create an undesirable precedent for development of a similar nature in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development is located in a rural area identified as a Rural Area under Urban Influence in Kerry County Development Plan 2022-2028, a rural area in close proximity to Tralee which is undergoing significant development pressure for one-off housing. The applicant has not demonstrated a rural generated housing need at this location in accordance with the requirements of Kerry County Development Plan, and in particular Objective KCDP 5-15. It is considered that the proposed development would exacerbate and contribute to the disorderly pattern of housing development in the area, would constitute haphazard one-off housing, would lead to demands for the uneconomic provision of further public services and communal facilities in the area, would interfere with the rural character of the area, would seriously injure the amenities of this rural area, and would conflict with Objective KCDP 5-15 of the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks and private effluent treatment systems in

the area. The proposed development would, therefore, be prejudicial to public health.

Note: Reason No. 3 raises a new issue not referred to in the appeal submission.

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.

Kevin Moore
Senior Planning Inspector

15th May, 2024