



An
Bord
Pleanála

Inspector's Report

ABP-320520-24

Development	Retention permission for house and septic tank.
Location	Cools, Headford, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2360440
Applicant(s)	Gavin Kelly.
Type of Application	Retention.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	John Crowley.
Observer(s)	none.
Date of Site Inspection	1 st November 2024.
Inspector	Oluwatosin Kehinde

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1.0 Site Location and Description

- 1.1. The 0.120 Ha site is located in the townland of Cools approximately 1km west of Headford village settlement and approximately 10km east of Killarney town. The site accessed off a private road and there is an existing house on the site.

2.0 Proposed Development

- 2.1. Retention permission for an existing dwelling house and a septic tank as constructed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority (PA) issued a grant of permission for the development as constructed subject to seven conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The decision to grant permission by the PA was informed by two reports from the Planning Officer (PO). The first report dated 20th of January 2024 highlighted the criteria for considering rural dwellings in the County and concluded that the application did not provide adequate information to assess the development in so far as wastewater, housing need and landscaping. The PO requested for further information.
- The second report dated 16th of July 2024 assessed the response by the applicant and was satisfied that the issues had been addressed. The PO recommended that planning permission be granted.

3.2.2. Other Technical Reports

- Site Assessment Unit (SAU) – Report dated 05th of July 2024 stated that on the bases of the further information submitted on the existing wastewater treatment system, recommended no objections to the development subject to conditions.
- Environmental Assessment Unit (EAU) – report dated 19th January 2024 concluded that having regards to the nature, scale and location of the works there is no realistic pathway for impact or possibility that the proposal could have significantly affected any European Natura 2000 site. Report also stated that the development concerned would not have required either an EIA or a determination as to whether an environmental impact assessment would have been required.

3.3. Prescribed Bodies

Uisce Eireann – No objection subject to standard conditions.

3.4. Third Party Observations

One third party observation was received by the PA and it is summarised as follows

- Footpath encroaches the road not legally owned by the applicant
- Site boundary maps does not match corresponding folio maps
- Boundary treatments not submitted
- Waste water treatment system details not submitted
- Access to water supply

A representation on behalf of the applicant was also made by a local TD

4.0 Planning History

No planning history on the site

5.0 Policy Context

5.1. Development Plan

The Kerry County Council Development Plan 2022-2028 is the statutory plan for the area. The site has a landscape designation of “Rural General” and also designated as a “Rural Area Under Urban Influence” in the plan. Chapter 5 set out the policies required for the continued sustainable development of rural County Kerry based on the following important five principles:

- The specific land use requirements of agricultural activity will be accommodated as a first priority.
- A focus on supporting vibrant rural communities centred on a network of rural village settlements is a cross-cutting theme of this Plan.
- Rural Kerry is an important national and international tourism and heritage asset, and its environmental and socio-cultural assets will be protected.
- Encouragement and support for restoration and refurbishment of the existing built fabric in rural areas.
- 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.

Objective KCDP 5-15 states that

“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.”

Volume 6 of the Kerry County Development Plan 2022-2028 contains development standards for residential development on rural and non-serviced sites

5.2. Natural Heritage Designations

Site Code 000365 Special Area of Conservation: Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC approximately 700 metres east of the subject site and approximately 2km north of pNHA Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment.

5.3. EIA Screening

- 5.3.1. Reference is had to Appendix 1- Form 1 (EIA Pre-Screening) and Form 2 (EIA Preliminary Examination) attached to this Report.

Having regard to the nature and scale of the development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is submitted that the applicant does not have legal interest in the road leading up to and beyond the site. It is said that this was due to a digitisation error by the Property Registration Authority.
- The landscaping plan granted by the PA and the footpaths constructed will result in narrowing of the passageway along the road. This will prove difficult for agricultural machinery to gain access and egress to lands beyond the site.
- There was no reference to what type of boundaries would be erected around the house in the PA application.
- The PA application did not state that the existing house was demolished and rebuilt in a different location.

6.2. Applicant Response

- It is submitted that the applicant has the legal interest in the land and has provided legal documentation of same.
- The applicant has responded that the retention permission was necessitated because the original house was structural defected and that no foundations existed under the main walls of the property. The original house had been in place for over 100 years.

- It is stated that the new house is constructed approximately 2m further south from the original location in order to provide wider road access along the north side of the house.
- The applicant has stated that a landscaping plan will be implemented and maintained to provide for a minor hedge bounding the private access road. The hedge will not exceed 1000mm in height and will not lead to any traffic hazard.
- It is stated that the dwelling is treated as a new house and considered under the Kerry County Council rural settlement policy. The applicant complies with the criteria set out in KCDP 5-15

7.0 **Assessment**

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

- Compliance with the Rural Housing Strategy
- Landscaping and boundaries
- Legal Interest
- Wastewater – New Issue

7.2. Compliance with the Rural Housing Strategy

7.2.1. The site is in the rural area of Cools and designated under the Kerry Development Plan 2022-2028 as a “Rural Area Under Urban Influence”. The development plan states that it is a key challenge in these areas to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas. The National Planning Framework also seeks, for rural areas under urban influence to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area.

7.2.2. It is established that there was an old dwelling on the site that was demolished to construct the new house that is the subject of appeal. Accordingly, the development comes under the criteria of Rural Settlement Policy set out in the development Plan and thus KCDP 5-15 applies. The applicant was born and reared locally thereby demonstrating the need to live in the area. I note that the Planning Authority did not express any concern regarding compliance with the rural housing strategy and the grounds of appeal also do not raise any concerns in this regard. The principle of a dwelling on the site has been established and I am satisfied that the development is acceptable in this location.

7.3. Landscape and Boundaries

7.3.1. The PA approved a landscaping scheme for the development that includes tree planting, hedgerows and lawn areas. The applicant will provide hedgerows to delineate and augment the site boundaries. The third party appeal has submitted that the landscaping approved on the northern boundary will prove difficult for agricultural machinery to gain access and egress to site beyond the site. The appeal notes conditions 5 and 7 of the PA grant relating to wing walls forming the site entrance and landscaping scheme.

7.3.2. The house to be retained is positioned further south of the road from the location of the original dwelling and with footpaths surrounding the house. From the documentation submitted, the private road leading to the house has a width of c. 4.9m and c. 5.9m at the northern boundary where the gable end corner of the dwelling meets the private road. The northern boundary treatment includes a double row of *Fagus Sylvatica* hedgerow planting at 500mm intervals. This will be planted on the inside of the site boundary. The vehicular entrance to the site is also characterised by a splayed access.

7.3.3. Regarding the type of boundaries that would be erected around the house. In the further information response by the applicant to the PA, a landscaping scheme was submitted detailing the boundary treatments and types of planting to be erected. I note that the Planning Officer (PO) reviewed the landscaping plan and did not express any concerns about the scheme. I am satisfied that the landscaping plan granted by the PA and the footpaths constructed will not result in the narrowing of the passageway along the road.

7.3.4. Based on the documentation submitted with the appeal and upon site visit, I do not believe that the development will make it more difficult for agricultural machinery to gain access or egress beyond the site.

7.3.5. I refer the Board to the submission by the appellant that the non-maintenance of landscaping along the northern boundary will further impede the use of the road way. This is a matter for the PA and not for board to consider. If the Board is minded to granting permission, I recommend that a condition be attached relating to the proposed landscaping scheme and that the details be agreed with the Planning Authority.

7.4. Legal Interest

7.4.1. The appellant has submitted that the applicant does not have legal interest in the road leading up to and beyond the site. That this is a digitisation error by the Property Registration Authority. In response to the appeal, the applicant contests the claims of the appellant and submits that the lands being challenged by the appellant is legally owned by the applicant.

7.4.2. On the basis of the information available, I am satisfied that there is no clear information presented to conclude that the applicant does not have sufficient legal interest in the appeal site and I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. In any case, this is a matter to be resolved between the relevant parties, the applicant and the third party in this instance, having regard to the provisions of S.34(13) of the 2000 Planning and Development Act.

7.5. Wastewater – New Issue

7.5.1. It is proposed to use the existing septic tank for the development. The PA sought further information regarding the conditions of the system and whether it has the capacity to serve the house. A survey report prepared by HW Construction Management Ltd submitted to the PA concluded that the septic tank has been in place for a few years and no detrimental factors have been identified. It concluded there was no evidence of percolation area, and a soakaway assumed. That it seems the septic tank is desludged when needed. The ground water vulnerability of the site is moderate and the local percolation conditions are also moderate. The septic tank is made of precast concrete installed pre 2006 consisting of 2 chambers with a

capacity of c. 3.2m³. There was no odour nuisance and the inspection chamber in good working order. The PA Site Assessment Unit expressed no objection to the existing system.

- 7.5.2. While the survey reported that there was no evidence of surface discharge, I have concerns regarding no evidence of percolation area with the septic tank. The EPA CoP requires the construction of percolation area as part of a domestic wastewater treatment system. The appeal site has not provided any evidence of same, therefore the existing system would be contrary to the EPA CoP for Domestic Waste Water Treatment Systems. I am not satisfied that it has been adequately demonstrated that the subject site would be suitable to being serviced by means of the existing septic tank. Given that there is no percolation area, there is a risk to ground water which would also be contrary to the provisions of the Water Framework Directive (WFD).

8.0 AA Screening

- 8.1. Having regard to the nature and scale of the development, the receiving environment, the separation distances, and the absence of any pathway to European sites, it can be concluded that the development, alone or in-combination with other plans or projects, would not give rise to any significant effects on any European site. As such, there is no requirement for a Natura Impact Statement in this case.

9.0 Recommendation

- 9.1. It is recommended that permission be refused for the reason set out below

10.0 Reasons and Considerations

- 10.1. It is considered that the area of the site is inadequate for the satisfactory disposal of septic tank effluent. The proposed development would, therefore, be prejudicial to public health.

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.

Oluwatosin Kehinde
Senior Planning Inspector

23rd December 2024

Appendix 1 - Form 1

EIA Pre-Screening

An Bord Pleanála			
Case Reference	320520-24		
Proposed Development Summary	Retention permission for house and septic tank		
Development Address	Cools, Headford, Killarney, Co. Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	<input checked="" type="checkbox"/>
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	<input checked="" type="checkbox"/>	Schedule 5 Part 2 Class 10 (b) (i) construction of more than 500 dwelling units	Proceed to Q3.
No	<input type="checkbox"/>		
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	<input type="checkbox"/>		EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	<input checked="" type="checkbox"/>		Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			

No	X	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP- 320520-24
Proposed Development Summary	Retention permission for house and septic tank
Development Address	Cools, Headford, Killarney, Co. Kerry
<p>The Board carried 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> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	Briefly comment on the key characteristics of the development, having regard to the criteria listed. The development is for a single storey house and septic tank in a rural area and comes forward as a standalone project. The development does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas,	Briefly comment on the location of the development, having regard to the criteria listed The development is situated in a rural area of urban influence. The development is in a rural setting that is removed from sensitive natural habitats and designated sites and

landscapes, sites of historic, cultural or archaeological significance).	landscapes of identified significance in the Kerry County Development Plan.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects. Having regard to the nature of the development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: Oluwatosin Kehinde

Date: 23rd December 2024