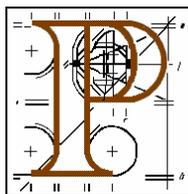


An Bord Pleanála



Inspector's Report

PL08.237146

PROPOSED DEVELOPMENT: Retention and Completion of Dwelling and Domestic Storage Shed.

LOCATION: Dunmaniheen, Killorglin, County Kerry.

PLANNING APPLICATION

Planning Authority (P.A.): Kerry County Council
P.A. Reg. Ref.: 427/10
Applicant: Stephen and Sinéad O'Sullivan
Application Type: Retention Permission
P.A. Decision: Grant Permission subject to Conditions

PLANNING APPEAL

Appellant: Michael Coyle and Mary Coyle
Type of Appeal: Third Party -v- Grant
Site Inspection: 27 September, 2010.
Appendices: Photographs and Key Map, Site Location Sketch, Development Plan Extracts.

1.0 INTRODUCTION

- 1.1** This is a retention application in respect of a single house development. The house on site is at an advanced stage of construction, ostensibly under the aegis of an extant permission granted under County Kerry Reg. No. 08/1672. However the house under construction was found to be in contravention of the terms of the permission then granted, so that it/was deemed unauthorised.
- 1.2** The retention application seeks to regularise the planning breach and facilitate the completion of the development in accordance with a design modification relevant to the extant permission.
- 1.3** I have read the file and inspected the site. It is stated on file that the breach of 08/1672 arose as a result of human error.
- 1.4** It may be noted that a new Killorglin Functional Area Local Area Plan was adopted by the Planning Authority circa the date of lodgement of the current appeal.

2.0 SITE CONTEXT AND DESCRIPTION

2.1 Location and Context

- 2.1.1** The site is located with frontage onto and accessed to/from the N72 main Killorglin – Killarney Road, approximately 1.5 kilometres from the roundabout junction with the N70 (Milltown Road) at the eastern entrance to Killorglin Town.
- 2.1.2** The area is characterised by the occurrence of a significant cluster of sporadic housing development on the outskirts of the town, although the intervening area in the direction of the town is not heavily built up.
- 2.1.3** The appearance of the site as viewed from the public road is clear from photographs on file and attached herewith to my report. The public road adjoining the appeal site is an unimproved section of national road, with no purpose-built hard shoulder. The 100 kph speed limit applies in the area.
- 2.1.4** The site rises northward away from the public road so that the house under construction and neighbouring houses have a finished floor level significantly above the road level in the vicinity. Development under construction on the south side of the public road is on lower ground, where the land slopes down below the level of the public road in the direction of the River Laune in the vicinity.

2.2 Site Description

- 2.2.1** The site is currently a secure building site between two one-off house sites to the east and west. The western site boundary comprises a concrete post and wire fence upon a bank reinforced by a planted hedge. The eastern site

boundary is characterised by a strongly planted row of coniferous trees, and light fencing. Photographs help to illustrate the proposed retained house relationship with neighbouring properties. The property to the west of the appeal site includes what appears to be a granny flat type unit, to the rear of the main house. The gable in that main house (appellant property) facing east, contains 2 no. frosted glass windows.

2.2.2 The extent of completion of the unauthorised structure on site is clear from photographs attached herewith to my report. The floor slab is in place and walls constructed. It may be noted that a mock roof gable profile has been erected to indicate the height and profile of the proposed finished western gable end. The poles forming the mock profile may be observed in some photographs.

3.0 PLANNING HISTORY

3.1 Appeal Site

The most relevant history cases described in the Planning Report for the Planning Authority are as follows:

Kerry 07/3475: Outline permission granted, subject to conditions, for the construction of a dwelling circa November 2007. Conditions attached included the following:

condition no. 2: precise location to be agreed at “permission consequent” stage, in order to regulate and control development,

condition no. 3: includes that the proposed house be

- single-storey with attic accommodation lit by rooflights,
- one and a half storey dormer of traditional design,
- roof pitched A-type gable ended,
- finished floor level not more than 300mm above existing ground level.

(No reason stated for condition).

Kerry 08/1672: Permission consequent to outline permission, granted subject to conditions for the construction of a dwellinghouse and ancillary and connection to the existing public foul main, circa October, 2008. Conditions attached to the “permission consequent” included the following:

condition no. 7: finished floor level to be reduced by 1 metre, or similar suitable alternative, the details of which shall be submitted to the Planning Authority for agreement prior to the commencement of the development, **in the interest of visual amenity and to integrate the structure into the surrounding area.**

condition no. 11: landscaping requirements, also for reasons including **integration into its setting.**

3.2 Sites in the Vicinity

3.2.1 Cases notified here relate in two cases to residential extensions to existing houses in the vicinity. There is also information (09/310) on a replacement house granted in the vicinity on the opposite side of a public road, circa May, 2009.

3.2.2 A case determined by An Bord Pleanála under PL08.222863 (Kerry 07/201) was a refusal on appeal for reasons of injury/interference with the setting of a Recorded Monument and injury to visual amenity. The appeal site in that case is/was approximately 1 kilometre west of the current appeal site.

3.3 Other Planning History

An Bord Pleanála has not adjudicated on any other recent case of relevance on on site or in the immediate vicinity of the current appeal site.

4.0 PROPOSED DEVELOPMENT, PLANNING AUTHORITY ASSESSMENT AND DECISION.

4.1 The main details of the proposed development as presented.

- Site Area 0.197 hectares.
- Gross floor area 386 square metres (of which 318 square metres is indicated to be proposed for retention and noted “area of dwelling”), i.e. remainder of area proposed is in storage shed.
- Connections to public water supply and sewerage proposed.
- Surface water disposal to soakpit.
- Finished floor level of house indicated to be at 17.05 metres, with proposed storage shed finish main floor level at 17.5 metres.
- Submitted Cross-Section (Drawing 0920-02/B) and Site Layout (Drawing 0920-01/C) indicate levels of existing neighbouring development relative to that proposed for retention, and the physical/distance relationship between existing and proposed.

4.2 Planning Authority Assessment

4.2.1 The Planning Authority Assessment is set out in the Planning Report dated 28 June, 2010.

4.2.2 Page 7 of the report summarises the history of the site development and explains the modification in development now proposed in order to mitigate the impact of the unauthorised breach of the extant permission 08/1672. In particular it is noted that

- the development proposed for retention has a finished floor level at **0.85 metres higher** than permitted under 08/1672, therefore rendering the development unauthorised by reference to that permission,

- applicants now propose (current application as submitted) to **reduce the height** of the dwellinghouse relative to that permitted under 08/1672 **by 0.55 metres** i.e. ridge height to be reduced from 7 metres to 6.45 metres, relative to finished floor level proposed retained.

4.2.3 The Report notes two third party submissions. The issues raised are summarised on page 6 of the Report.

4.2.4 The main points made in the conclusions to the assessment are:

- while the now proposed reduction in height compromises the design of the house, the revised design would not be out of keeping with existing house designs in the vicinity,
- the net result in height of house is that it would be 0.3 metres higher than permitted previously,
- development proposed for retention would not overshadow house on adjoining house to west,
- revised design has no windows or doors on its eastern side elevation, thus eliminating any overlooking (**NB** this observation is understood to refer to the *western elevation*: the eastern elevation as presented actually contains 4 no. east facing windows),
- regarding surface water disposal, the “principal fall” is towards the public road: care needed to ensure no run-off to public road,
- regarding services: public water supply and sewerage connections proposed and in order (noted already paid under aegis of extant permission),
- traffic considerations: entrance proposed as previously granted and no submission received from NRA.

4.2.5 It may be noted that the report states no reports or referrals. However I note on file a report from the Kerry National Road Design Office (NRDO) which recommends a planning condition be attached to any permission granted in compliance with an objective of the Development Plan.

4.3 Planning Authority Decision

4.3.1 By order dated 29 June, 2010 the Planning Authority decided to grant permission subject to fourteen conditions, generally as recommended in the Planning Report.

4.3.2 In the context of the current appeal, I draw the attention of the Board to the following planning conditions proposed by the Planning Authority.

Condition No. 1: requires retention and completion in accordance with submitted plans.

Condition No. 10: includes prohibition on discharge of surface water or seepage water to the public road.

Condition No. 12: includes parts (a) and (b) requiring retention and strengthening of existing boundary screening.

4.3.3 Reasons and Considerations underpinning the decision are set out in Schedule 1 of the Decision, regard being had to:

- nature, extent and location of development,
- planning history on site,
- submissions received,
- subject to conditions, would not be visually obtrusive or seriously injure the amenities of the area.

5.0 APPEAL, RESPONSES AND OTHER CORRESPONDENCE

5.1 The Appeal

5.1.1 The appeal was submitted by Michael C. Ahern, Solicitor on behalf of the appellants. The letter of appeal is supported by copies of submissions made to the Planning Authority at planning application stage.

5.1.2 The **grounds of appeal** may be summarised as follows:

- first floor level of subject house and western gable under construction are/would be visually obtrusive and have an overbearing effect on appellant property,
- the front bay window of subject house will be a source of overlooking of appellant property,
- site drainage will adversely affect appellant property.
- the compliance requirement embodied in condition no. 7 of 08/1672 was never complied with by the applicant/developer,
- a significant amount of fill was required to raise the garden and driveway under construction to the level at which the first floor is now proposed for retention.

5.2 Applicants' Response to Appeal

5.2.1 The response to the appeal makes the following points which may be considered relevant to the appeal:

- the finished floor level as created has arisen from human error by technical personnel employed on behalf of the applicants: the requirement of condition no. 7 of 08/1672 was not observed,
- applicants will comply with all necessary drainage requirements to ensure no adverse impact on appellant property,
- the Planning Report for the Planning Authority supports the now proposed development,
- applicants' house design as now presented has resulted in a loss of living accommodation (relative to 08/1672), and the applicants have expended large sums of money to date on serviced site acquisition and construction costs.

5.2.2 An Bord Pleanála is requested to uphold the decision of the Planning Authority.

5.3 Planning Authority Response to Appeal

The Planning Authority has not responded to the current appeal.

5.4 Other Correspondence

5.4.1 There has been no other substantive planning correspondence submitted to An Bord Pleanála during the period of the appeal.

5.4.2 At planning application stage there were two submissions made to the Planning Authority. One of these submissions was in the name of the current appellants raising issues as raised now in the current appeal. The other submission raises issues of zoning, NRA concerns and septic tank treatment.

6.0 OFFICIAL POLICY

6.1 There are three documents of specific relevance in this case.

- Development Plan (County Plan and Killorglin LAP).
- NRA Policy Statement on Development Management Guidelines and Access to National Roads 2006.
- Sustainable Rural Housing Guidelines for Planning Authorities, 2005.

6.2 Statutory Development Plan

6.2.1 Relevant sections of the County Plan and the Killorglin Functional Area LAP are highlighted on extracts attached herewith to my report. It may be noted that a Plan extract reproduced on page 5 of the Planning Report for the Planning Authority (at planning application stage) appears to be an extract from the 2006 LAP, which has since recently been superseded by the 2010 LAP.

6.2.2 The site is effectively zoned Rural General in the Development Plan.

6.3 NRA Policy

National policy under this heading is based on a presumption against multi-point access to national roads outside the 50 kph speed limit zones.

6.4 Sustainable Rural Housing

Relevant sections of policy as enunciated in these Guidelines includes issues relating to justification of rural housing location and the appropriateness of attaching occupancy conditions to permissions granted; and ribbon development considerations.

7.0 ASSESSMENT

7.1 Principle of Development

7.1.1 Having regard to the zoning in the LAP, the absence of any justification for the applicants' housing need to locate on this site and the creation of a new additional vehicular access point onto a national route where the 100 kph speed limit applies, I consider on the face of it by reference to the Board's duty to undertake a de novo assessment, that there should be a presumption against a grant of permission in this case.

7.1.2 Regarding the planning history the development now proposed for retention appears to differ fundamentally from the original proposal envisaged at outline stage which specified in planning condition no. 3 (3475/07) that the proposed development be single-storey with attic accommodation i.e. attic accommodation lit by rooflights only. However the permission sought and granted as a permission consequent, under 08/1672, appears then to have accepted a design with dormer windows instead of rooflights. However, the decision in that case was not appealed, and would have been subsequently confirmed etc, by the Planning Authority, therefore there would be a reasonable expectation that anything built under the aegis of 08/1672 would, subject to compliance with conditions etc., be authorised development.

7.1.3 I note also that there were no submissions, observations or reports recorded at the time of the permission consequent application (08/1672), and no conditions attached relating to housing occupancy. From this I infer that

vehicular access issues on the N72 and housing need were outweighed by the assessment of the site as an infill (see footnote to the conclusion of Planning Report on 08/1672).

- 7.1.4** Having regard to the particular circumstances of the planning history, therefore, I consider it appropriate to confine consideration of this appeal mainly to the issues raised in the formally submitted appeal.

7.2 Finished Floor Level and Building Height

- 7.2.1** I accept the general thrust of the assessment for the Planning Authority that the reduced height of the building (measured from finished floor level to ridge height) would be generally acceptable in the local environment. However I do not accept that there would not be injury to amenities of the area by reference to the impact on neighbouring property to the west. The appeal includes a submission that the western gable would have an overbearing impact. I agree. Having stood at various points within the curtilage of appellant property, I consider the A frame gable and its elevated proximity to appellant property would make for a visually obtrusive and generally overbearing feature for appellants. In order to overcome this situation, either permission should be refused for the development proposed for retention, or there should be a condition attached requiring a hipped roof finish above eaves level in the house proposed for retention. This would result in a loss of certain first floor accommodation within the subject house, but critical accommodation could be made up by certain internal reconfiguration and the sacrifice of some areas such as a gym or utility area. The house proposed for retention and completion has a substantial floor area, as proposed, for family living.

- 7.2.2** Regarding the appearance of the proposed development in the wider environment, I do not consider a change from the A frame on the western elevation, as recommended above, to be critical. The area is characterised by mixed house designs. In the circumstances presented, I consider the amenities of neighbouring residential property should be duly weighted, and a modification such as I propose would not seriously injure the amenities of the area. The Board could consider a balancing hipped roof finish at the eastern end of the house. However I do not consider such an imposition to be critical, although such a finish with relocated east facing windows in the upper storey, would have the benefit of overcoming any perception of overlooking to the east. Certain further internal reconfiguration would arise as a result of the imposition of a hipped roof at the eastern end of the house.

7.3 Surface Water Drainage

I have noted the response to the appeal. I consider this matter may be secured by an appropriately worded condition, essentially refining and expanding the scope of condition no. 10 proposed by the Planning Authority.

7.4 Overlooking

Having regard to the existing and proposed screening, and the landscaping planning conditions proposed by the Planning Authority (proposed condition no. 12) I do not consider this to be a serious amenity issue.

7.5 Other Issues

I have referred to issues raised in certain other third party correspondence at planning application stage. I consider the matters of zoning and road access are effectively superseded by my assessment of planning history in the context of section 7.1 of my report herein, above. Regarding the septic tank concern raised, this development proposes connection to and use of a public sewer.

7.6 Planning Conditions

7.6.1 There is a form of housing occupancy condition proposed by the Planning Authority in this case. It is not specific to the current applicants. The form of words used appears to strike a balance between acknowledgement of site planning history and consideration of Development Plan policy and objectives. If permission is being granted, I consider it would be appropriate to follow the Planning Authority form of words i.e. omitting reference to applicants per se, subject to other reasonable standardization of condition wording.

7.6.2 There has been no financial contribution condition proposed by the Planning Authority in this case. This appears to be because such a contribution has already been paid (Planning Authority Planning Report refers). If permission is granted, I consider An Bord Pleanála should attach a standard financial contribution condition (amount unspecified). The Planning Authority may exercise its discretion to ensure a double payment does not arise, if necessary or appropriate.

8.0 RECOMMENDATION

Grant permission subject to conditions, for the following reasons and considerations.

REASONS AND CONSIDERATIONS

Having regard to the site planning history and the pattern of development in the area, it is considered that, subject to compliance with conditions specified below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development proposed for retention and completion shall be in accordance with plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2.
 - (a) The western gable end shall be modified by the insertion of a hipped roof above eaves level, with a pitch of approximately 45 degrees.
 - (b) The accommodation within the building so affected by this modification shall be omitted and/or made up by appropriate internal reconfiguration of the house plan within the overall building envelope proposed.
 - (c) The attic accommodation remaining below the hipped roof, whether retained for storage or other purposes, shall be lit by roof lights front and rear.

Development having commenced, revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of any further works on site.

Reason: In the interest of residential amenity.

3.
 - (a) The dwelling proposed for retention and completion, when completed, shall be first occupied as a place of permanent residence and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the occupant.
 - (b) Prior to first occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.
 - (c) The proposed development shall not be used as a holiday home or a second home.

Reason: To secure compliance with the requirements of the development plan for the area, in an area of urban generated development pressure.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within 4.5 metres of the divisional boundary (centre line) with adjoining property on either side of the dwellinghouse permitted herein.

Reason: In the interest of the amenities of the area.

5. (a) The roof colour of the proposed house shall be blue-black, black or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.
- (b) The external walls shall be finished in neutral colour, tone and texture.

Reason: In the interest of visual amenity.

6. (a) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
- (b) Surface water from the site shall not be permitted to drain or seep onto neighbouring property or onto the public road.

Reason: To ensure adequate servicing of the development, to safeguard the amenities of the area and in the interest of traffic safety.

7. All waste management and disposal arrangements shall be in accordance with the prevailing requirements of the planning authority.

Reason: To safeguard the amenities of the area, and secure the objectives of the development plan for the area.

8. The entrance gates to the house shall be set back five metres from the centre of the new front boundary fence. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees to the line of the front boundary fence, shall be constructed in sod and stone or native stone and shall not exceed one metre in height.

Reason: In the interest of traffic safety.

9. Any external lighting shall be properly cowled and directed away from the public roadway, and shall not be visible from any point more than 100 metres from the light(s).

Reason: In the interest of traffic safety, and to minimise light pollution in the rural environment.

10. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

11. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with the planning authority prior to further development of the site. The scheme shall include the following:

- (a) retention of all existing boundary screening at the side and rear of the houses,
- (b) strengthening of existing hedges/ditches, in particular any gaps in the hedge along the western site boundary shall be planted to match the existing hedge,
- (c) a minimum of 25 no. heavy standard saplings/semi-mature native trees of different varieties shall be planted in clusters and maintained within the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

12. The proposed garage shall be used only for storage and such purposes incidental to the enjoyment of the house proposed for retention and completion, and shall not be used for any commercial or agricultural purpose.

Reason: In the interest of clarity, in the interest of residential amenity.

13. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Keith Sargeant,
Senior Planning Inspector.**

11th November, 2010.

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