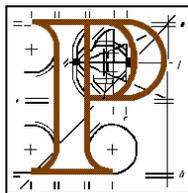


## An Bord Pleanála



## Inspector's Report

**DEVELOPMENT:** Permission to reconstruct, renovate and extend old house in ruin condition, installation of effluent treatment tank and polishing filter and demolition of second old ruin.

**LOCATION:** Reenroe, Ballinskelligs, Co Kerry.

### PLANNING APPLICATION

**Planning Authority:** Kerry County Council.

**Planning Authority Reg. No:** 11/351.

**Applicant:** Gearoid King.

**Application Type:** Permission.

**Planning Authority Decision:** Refuse Permission.

### APPEAL

**Appellant:** Gearoid King.

**Type of Appeal:** First Party v Refusal

**Observers:** An Taisce

**DATE OF SITE INSPECTION:** 8<sup>th</sup> September 2011

**INSPECTOR:** Bríd Maxwell

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site is located in a rural area in the townland of Reenroe, circa 2km to the north east of Dungeagan Village 3 kilometres to the north east of Ballinskelligs, and circa 12 kilometres to the south of Cahersiveen, Co Kerry. The appeal site which has a stated area of .764 hectares is within an open and exposed landscape between the road and the sea. The appeal site is circa 300m to the north of Trasassanach Beach. The Emlaghmore River which meanders into the sea is situated on adjacent lands to the south west of the site. The appeal site is occupied by a cluster of ruinous stone structures. Access is by way of an unsurfaced track leading south from the public road. There are large drains on either side of the access road and along field boundaries. Ground conditions on adjacent lands are visibly wet and boggy with vegetation indicative of wet conditions in particular rush. However the site itself comprises grassland and appears to have been improved and farmed over time. There is a dispersed pattern of development in the vicinity, including numerous holiday homes whilst the ruin of a derelict hotel building a modern concrete structure to the south east of the site is a prominent eyesore in the landscape.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposal as outlined in the public notices is “permission to reconstruct, renovate and extend existing old house in ruin condition and to install an effluent treatment tank and polishing filter and to demolish second old ruin.”

## **3.0 PLANNING HISTORY**

- 101208 Previous mirror application withdrawn prior to decision
- There have been a number of Board decisions in the vicinity which are worthy of note including the following.
- PL223172 Refusal of permission for demolition of existing dwelling and construction of replacement dwelling on a site to the southwest of the appeal site. The refusal reasons referred to inappropriate visual impact and injury to the character of the landscape.
- PL04.204527. The Board refused permission for a dwelling on adjacent lands to the south east on basis of visual obtrusion and interference with character if the landscape, prejudice to public health, negative impact on habitats SAC and NHA.
- PL223172 Refusal of permission for dwelling on site to the south west on grounds of visual impact resulting in injury to the character of the landscape.
- PL221863 Permission for hotel and ancillary services and demolition of existing derelict hotel building. This followed on from two refusals for larger proposals. PL127653 (Hotel cottages, fitness centre and golf course) Refusal referred to injury to visual amenity, inappropriate location for holiday homes and prejudice to public health. PL209025 Refusal of permission for hotel, conference centre, fitness centre on grounds of injury to visual amenity and use as holiday home.

#### **4.0 PLANNING AUTHORITY'S DELIBERATIONS AND DECISION.**

##### **4.1 Submissions.**

- An Taisce notes the open nature of the site. Existing houses are in full view from the public road and are in such a ruinous state they will have to be demolished rather than renovated. A new house on the site is likely to have a high visual impact when viewed from the public road.
- Submission from Michael Healy Rae TD makes representations on behalf of the genuine application.

##### **4.2 Planning Authority Reports.**

- Area Engineer Water Services report states that a connection to the public watermain can be given on the R567.
- Environment Section Report assesses the submitted site assessment and details technical issues which can be dealt with by condition. Permission is recommended subject to conditions.
- Planner's report asserts that the site development will be highly obtrusive and questions applicant's compliance with rural settlement policy. Existing structure on the site is an old ruin and residential usage has long been extinguished. Refusal recommended.

##### **4.3 Planning Authority's Decision**

###### **4.3.1 The Planning Authority decided to refuse permission for the following reasons**

*“ The proposed development would be located within an area zoned Rural Secondary Special Amenity Area in the Kerry County Development Plan 2009-2015 where it is the policy of the Planning Authority to limit development to a site and design that will not have an adverse impact on the character of the landscape. The proposed development would be located on an open and exposed site would seriously injure the amenities of the area by reason of its obtrusiveness and it would interfere with the character of the landscape and natural beauty of the area, which is necessary to preserve, in accordance with Objective ZL 12-1 of the Kerry County Development Plan 2009-2015. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.*

*It is an objective of the Kerry County Development Plan 2009-2015 as set out in ZL12-7, to protect and conserve views and prospects from roads to the north of the site of the proposed development. It is considered that the proposed development would interfere with views and prospects which it is considered necessary to preserve. The proposed development, by reason of its prominent and exposed position would also seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.*

*The proposed site is located in a stronger rural area as set out in Section 3.8.6 of the Kerry County Development Plan 2009-2015. The information submitted with the application is not adequate to sustain a case of local housing need for permanent occupation in relation to this development. It is considered that the proposed development would materially contravene the Kerry County Development Plan 2009-2015. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.*

*The proposed development would contravene the policies of the Planning Authority in relation to renovation and restoration of existing buildings situated in the open countryside as set out in Section 3.9 of the Kerry County Development Plan 2009-2015 which states that the structure to be restored /renovated shall constitute an identifiable dwelling with the walls*

*being generally intact. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.*

## **5.0 APPEAL SUBMISSIONS**

### **5.1 First Party Appeal**

The grounds of appeal, submitted by Frank Curran, Consulting Engineers Limited, on behalf of the applicant Gearoid King are summarised as follows:

- No allowance in decision for cluster of buildings in ruin on the site.
- Applicant is living and working locally and complies with the requirements for development in a secondary special amenity area. Map submitted with the appeal shows site, location of business and location of family home.
- Reconstruction of old houses and landscaping will improve the visual impact from the road.
- Development complies with Objective ZL12-5
- Walls are generally intact and door and window apes are visible. Validation of the application and fees were on the basis of renovation and extension.
- Development complies with Sustainable Rural Housing Guidelines for Planning Authorities.
- Safe access to the site and waste water disposal arrangements comply with the EPA code of practice.

### **5.2 Responses of Planning Authority to Grounds of Appeal**

5.2.1 The Planning Authority did not respond to the grounds of appeal.

### **5.3 Observers**

5.3.1 An Taisce supports Planning Authority's decision to refuse. Site is within area of secondary special amenity and sensitive landscape which can accommodate a limited level of development. Site is open and exposed and existing ruins are quite visible from the road. Present ruin stone walls blend with the landscape but the new house proposed for the site would have a much greater visual impact. Landscaping to screen the house would have to be of such a size to obstruct views. Development would have significant effect on designated views and prospects. Use of ruin as a dwelling has been abandoned for many years. Applicant is from the area but not from the present landholding. The family home is in a much less sensitive area where a new house could be accommodated without impact on visual amenity. Applicant has not submitted sufficient information to justify the grant of permission.

## **6.0 PLANNING POLICY**

### **6.1 NATIONAL POLICY Guidelines on Sustainable Rural Housing 2005.**

6.1.1 The National Spatial Strategy identified categories of rural area types requiring differing settlement policies for rural housing. Maintaining this approach, The Sustainable Rural Housing Guidelines issued by the Department of the Environment Heritage and Local Government, April 2005

are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas. In terms of the guidelines the appeal site lies within an area describe as predominantly dispersed settlement area. The key requirements in these areas should be to support the maintenance of a vibrant population, including the maintenance of the integrity and viability of essential rural services and facilities while also protecting valuable assets such as important landscape quality and the natural and cultural heritage including the linguistic integrity of gaeltacht areas.

## **6.2 Kerry County Development Plan 2009**

6.2.1 The current Development Plan is the Kerry County Development Plan 2009 – 2015. Chapter 3 of the County Development Plan deals with the Settlement Strategy and Rural Development Policies. The site is within an area zoned rural secondary special amenity and stronger rural area. There are designated views and prospects from the Regional Road to the north.

6.2.2 Part 2 of Chapter 3 of the Plan, deals with Rural Development Policies. Section 3.6 of the CDP deals with Rural Housing and the following objectives are considered relevant:

*It is an objective of the Council to*

*SS 3-31 Provide for the development of sustainable rural housing in the county in accordance with the ‘Sustainable Rural Housing’ guidelines issued by the Department of the Environment, Heritage and Local Government.*

*SS 3-32 Ensure that the provision of sustainable rural housing encompasses its social, economic, cultural and environmental impacts.*

*SS 3-33 Facilitate where possible, in accordance with proper planning and sustainable development, family members on their own land.*

*SS 3-34 Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.*

*SS 3-35 Promote the preservation and strengthening of rural communities throughout the county in accordance with their social, economic and environmental sustainability.*

6.2.3 Chapter 12 of the County Development Plan deals with Zoning & Landscape and section 12.2.9 deals with the general rural zoning in Kerry. Chapter 13 of the County Development Plan deals with Development Management Guidelines and Section 13.5 deals with Residential Development in Rural Areas. Standards in relation to low density residential developments in unserviced areas are set out at 13.5.2.

6.2.4 Ballinskelligs Bay is an NHA and SAC.

## **6.3 Kerry Rural Design Guide.**

6.3.1 The Planning Authority has produced Building a House In Rural Kerry Design Guidelines, January 2009. The document sets out guidance in relation to site location, siting and integration, boundary treatment and design.

## 7.0 ASSESSMENT

7.1 Following my inspection of the site and consideration of the documentation on file and the prevailing local and national policies and plans, I consider that the appeal can be considered under the following Broad headings:

- Development Plan / National Policies.
- Visual Impact and Design
- Site Specific considerations

### 7.2 Settlement Strategy / National Policy / Development Plan Policy.

7.2.1 The site is located in an area designated as Secondary Special Amenity Area and stronger rural area within the Kerry County Development Plan 2009 and within an area with a predominantly dispersed settlement pattern as described in the Sustainable Rural Housing Guidelines, Department of the Environment Heritage and Local Government 2005.

7.2.1 The Guidelines on Sustainable Rural Housing distinguish between urban generated and rural generated housing in rural areas. The guidelines refer to ruinous dwellings in section 3.2.2 in the context of holiday and second home development. The guidelines indicate that proposals to reinstate, conserve and or replace existing, ruinous or disused dwellings subject to satisfying normal planning considerations relating to the provision of safe access and the design and provision of any necessary wastewater disposal facilities.

7.2.2 In relation to the County Plan strategy, the plan sets out an overall strategy to provide for the development of sustainable rural housing in the county in accordance with the Sustainable Rural Housing Guidelines. The key settlement strategy at all levels is that the level of development will depend on the degree to which it can be integrated into the landscape. In terms of secondary special amenity areas, it is stated that such areas constitute sensitive landscapes which can accommodate a limited level of development and the relevant provisions are set out in section 3.6.1 to 3.10.5 and table 3.7.11.

7.2.3 Provisions for renovation or restoration of existing buildings situated in the open countryside are set out at 3.9 of the County Development Plan. Certain provisions which have to be satisfied include

*“The structure to be restored/renovated shall constitute an identifiable dwelling with the walls being generally intact. In the case of refurbishment and extension proposals, the scale and architectural treatment of proposed works shall be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development.*

*Restored or renovated dwellings shall be located where safe access, acceptable wastewater disposal arrangements can be put in place and where specific development objectives outlined in the County Development Plan are not contravened and bat surveys are completed to assess the impact of restoration on these protected species.”*

- 7.2.4 The submitted proposal is for a dwelling planned as a primary residence and the applicant indicates that his family home is in the adjacent townland of Emlaghmore West and has a business King Steel which is also locally based. Cover letter submitted with the appeal further outlines strong ties to the local area. The Planning Authority in its decision concluded that the information submitted is not adequate to sustain a case for local housing need for permanent occupation and I would concur that further evidence should be provided to support such a case.
- 7.2.5 However the application as submitted is made on the basis that it is the reconstruction, renovation and extension of an old house. In relation to the existing structure the first party appeal submission contends that the structure is generally intact, the door and window apertures are visible and there is an iron roof on the building. As is evidenced in photographs the structure is in poor condition and use as a dwelling has been extinguished for some time. Whilst walls are substantially intact, the corrugated metal roof is partially intact. The buildings have been used to house animals and the building is clearly totally unsuitable for modern use without substantial reconstruction and renovation. The walls may be in situ but damp proofing, replacement of floors, new fixtures and a new roof are the minimum stages required to provide modern accommodation and the suitability of the existing walls for restoration has been questioned. In addition the existing structure would provide minimum accommodation and requires to be extended in floor area to provide for modern accommodation standards. The application and submitted plans are poorly detailed however the development as presented outlines that the proposal incorporates an extension of 73 sq. metres over the original dwelling of 63 sq. metres. In effect the existing structure constitutes less than half of the proposed structure and requires major renovation. Given the condition of the existing structure I consider that the development does not meet the criteria as set out in Para 3.9.
- 7.2.6 In overall consideration under national and county policy the appellants have I believe demonstrated a local connection however as noted in the submission of the observer the family home may provide a more appropriate location for a new dwelling. The principle as set out in Para 3.7.10 of the County Development Plan in respect of siting in proximity to family home is relevant in this regard. Having regard to the condition of the existing structure I have serious reservations in relation to the suitability of the existing structure for reconstruction renovation and extension and I conclude that the proposal does not meet the relevant criteria as set out in Paragraph 3.9 of the County Development Plan which are reasonable criteria to assess proposals made in this regard. On balance therefore the fourth reason for refusal as set out by the planning authority is reasonable.

### **7.3 Visual Impact**

- 7.3.1 On the issue of visual impact the site is located within an open and exposed landscape and in a highly visually sensitive location. This area is designated as being of Secondary Special Amenity in the Kerry County Development Plan,

2009, and it is policy in such areas not to permit development that cannot be integrated into its surroundings. The site is also in an area indicated in the development plan as having a View and Prospect worth preserving. The designations and associated policies in the plan area considered reasonable. The highly visually sensitive nature of the location has also been recognised in previous decisions of An Bord Pleanála in the vicinity. The Council's second reason for refusal asserts that the dwelling "because of its design and the materials used in construction would constitute an incongruous feature in the rural landscape and would interfere with the character of the landscape".

- 7.3.2 Having regard to the open and exposed nature of the site and particularly lack of screening any development on the site would be visible. However there are existing structures on the site which have a visual impact and the proposed house design takes its cue from the scale and form of the existing structures. Having regard to the location of the existing structures including distance from the public road and to the general pattern of development in the area, I do not agree with the conclusion of the Planning Authority that the proposal constitutes an unduly incongruous feature in the landscape. I do not therefore consider that the visual impact of the proposal is a substantive issue in the appeal.

#### **7.4 Site Specific Considerations.**

- 7.4.1 The proposal is to connect to public mains water supply and no issues are raised in the technical reports on file in this regard. As regards wastewater treatment it is proposed to install an on-site package waste water treatment system with polishing filter discharging to groundwater. The site suitability assessment submitted shows a soil profile of topsoil clay with sand silt with cobbles at .0.8m. A T value of 20.44 was recorded. Neither water table nor bedrock were encountered in the trial hole. It is proposed to install a mechanical aeration unit followed by gravity discharge soil polishing filter to the south of the proposed dwelling. I note the tests relating to the site would appear to indicate the suitability of the site to accept treated effluent.
- 7.4.2 Whilst the site differs from surrounding wet and boggy lands I would have some concerns in respect of potential for contamination of surface waters having regard to the numerous land drains along field boundaries. The issue of cumulative impact of wastewater treatment plants should be considered particularly having regard to the proximity of the site to the Ballinskelligs Bay and Inny Estuary SAC and NHA Site Code 000335. I consider that the level of detail provided as part of the application is poor and particularly the ecological implications of the development have not been in any manner addressed. An Appropriate Assessment of the development should focus on the potential impacts on the adjacent SAC and NHA in view of the site's conservation interests and the application does not in my view provide sufficient information to make a determination on the impact on habitats. I note that this is a new issue which has not been addressed by the Parties to the appeal.

7.4.3 In relation to traffic the site is located on a relatively straight section of the road and visibility can be attained.

## **7.5 RECOMMENDATION**

7.5.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I recommend that permission be refused for the reasons and considerations set out hereunder.

### **REASONS AND CONSIDERATIONS**

1. The site of the proposed development is located in an unserved vulnerable scenic area where it is the policy of the planning authority in the Development Plan to protect the landscape of the county as a major economic asset as well as for its invaluable amenity value and beauty. Having regard to the stated provisions of the current county development plan in particular provisions 3.9 relating to the ruinous buildings and the criteria as set out in that policy which are considered in the context of the site and area to be reasonable, it is considered that the existing structure on the site is not substantially intact or suited to modern use and capable of being retained as part of the development proposed for the site and would represent a minor element of the development proposed. Accordingly, it is considered that the proposed development would be contrary to the policies set out in the Development Plan. The proposed development would, therefore, be contrary to proper planning and sustainable development of the area.

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Bríd Maxwell,  
Planning Inspector  
12<sup>th</sup> October 2011.