



An  
Bord  
Pleanála

## Inspector's Report ABP.305883-19

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| <b>Development</b>                  | Change of use of existing private leisure building to residential use ancillary to the primary dwelling house |
| <b>Location</b>                     | Oysterbed Road, Drimnamore, Sneem<br>Co. Kerry  |
| <b>Planning Authority</b>           | Kerry County Council  |
| <b>Planning Authority Reg. Ref.</b> | 19/895  |
| <b>Applicant(s)</b>                 | Manfred Meyer   |
| <b>Type of Application</b>          | Planning permission   |
| <b>Planning Authority Decision</b>  | Refuse permission   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Manfred Meyer   |
| <b>Observer(s)</b>                  | Eugene & Lilly Ross   |
| <b>Date of Site Inspection</b>      | 16 <sup>th</sup> March 2020   |
| <b>Inspector</b>                    | Mary Kennelly   |

## **1.0 Site Location and Description**

- 1.1.** The site is located in the townland of Drimnamore, which is approx. 3km to the south-east of Sneem Village and approx. 1.5km to the west of Parknasilla Resort. This is a scenic rural area which is situated on the River Sneem Estuary, on the seaward side of the N70, Ring of Kerry Road. This part of the tourist route travels along the southern coast of the Iveragh Peninsula, between Kenmare and Sneem, offering panoramic views of Kenmare Bay and the Beara Peninsula to the south. The site is accessed by means of a long straight local road leading to Oysterbed Pier, and which branches off (c.1km south of the N70) in a north-westerly direction towards the estuary. The local road is quite narrow with no hard shoulders or line markings, and much of the eastern part of the road is wooded. The private road serving the site is similar and there are several one-off houses along its length.
- 1.2.** The site area is given as 2.28ha. The site is long and rectangular in shape and stretches down to the estuary. The main residence is located at the western end, adjacent to the water and there is a boat house immediately close to the water. At the eastern end of the site, there is a detached structure which has a stated use as a leisure building. It was constructed following a grant of planning permission in 2005 for a private leisure facility to serve the needs of the elderly owner/occupant of the main residence. It has its own access driveway and gate and is served by a WWTP.

## **2.0 Proposed Development**

- 2.1.** It is proposed to convert the leisure building into a single-storey dwelling house, ancillary to the primary dwelling house on the site with a stated floor area of 106.8sq.m. The dwelling would be accessed by means of an existing entrance and gateway from the private lane. It would be served by the existing puraflo wastewater treatment unit, which is located to the south of the dwelling. This consists of a septic tank with puraflo filters and a percolation area, which was granted as part of the permission for the leisure unit under 05/2989.
- 2.2.** The accommodation incorporates two bedrooms, a living room and a kitchen/utility area. The applicants have indicated that as new owners of the property, their needs differ from those of the previous owner. They do not need the leisure facilities and they wish to be able to invite family and friends to stay (as guests) in the unit.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to **refuse** permission for one reason which was based on overdevelopment of the site, material contravention of condition 1(a) of PI Reg. 05/2989 which prohibits the use of the structure for habitable use and failure to comply with the County Development Plan, which prohibits holiday home developments in this area and also prohibits granny flats which are physically separate from the main house. It was stated that the proposal would set an unwanted precedent in a rural area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report noted the location of the site in a **Rural Secondary Special Amenity Area**. It was noted that such areas constitute sensitive landscapes which can accommodate a limited level of development, which would depend on the degree to which development can be integrated into the landscape. It was further noted that Objective RS-13 seeks to ensure that holiday/second homes are not permitted in the rural landscape. Section 13.7 stipulates that granny flats should not be detached from the main residence, that the garden space should not be subdivided, that it should not be let or sold separately and that it should be capable of reintegration into the main dwelling house.

The Area Planner noted that the existing structure had been granted permission (05/2989) as an ancillary leisure building to meet the needs of a previous elderly owner and that condition 1(a) of that permission had prohibited its use as a holiday home/second home or any other residential, commercial or agricultural use. It was considered that the proposal would materially contravene this condition and would also contravene the CDP policies on second homes and in respect of granny flats, and that it would set an undesirable precedent. However, it was observed that the structure would not be visible outside of the general area.

It was considered that EIA was not required given the nature, scale and location of the project. Appropriate Assessment Screening was carried out and it was concluded

that there is no likely potential for significant effects to Natura 2000 sites. Refusal was recommended for the reason which was generally in accordance with the reason given by the P.A. in its decision.

### 3.2.2. **Other Technical Reports**

**Biodiversity officer** – The application relates to a change of use and therefore no physical works are required. No further comments to make.

**County Archaeologist** – there are no recorded monuments listed in the Record of Monuments and Places in proximity to the proposed development. The site has previously been disturbed. No mitigation is required.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

**Eugene and Lilly Ross** – Objection to proposed development on the grounds of precedent, absence of need for the development, would seriously injure the amenities of other properties in the area and would be contrary to the proper planning and sustainable development of the area.

## 4.0 **Planning History**

**PA Ref 99/2958** – planning permission granted in Jan. 2000. For the construction of a private house (3 bed) and a boat house and outline permission was granted for the construction of a leisure building.

**PA Ref 03/967** – planning permission granted (July 2003) for retention of house as constructed (2 bed) and for construction of the boat house. Outline permission was granted for the construction of a leisure building which included a septic tank and an independent driveway from the private lane.

**PA Ref. 05/2989** – Permission Consequent granted (Nov. 2005) for construction of a building to contain private leisure facilities. It was to be served by a septic tank with a Pura flow WWTS. Condition 1(a) restricted the use to a private leisure facility ancillary to the existing private residence on the site. Condition 1(b) prohibited its use

as a holiday home, second home or for any other residential, commercial or agricultural uses. It was further stipulated that the existing dwelling and the proposed structure shall remain as one integral unit under one ownership and that neither properties can be disposed of separately. Note an application for extension of duration was refused on 23/02/11 as it was out of time.

**PA Ref. 11/332** – Permission granted (July 2011) for retention of minor changes to the elevations and plans for the leisure building granted under 05/2989.

**PA Ref. 12/628** – Permission granted in Nov. 2012 for a garden shed.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Kerry County Development Plan 2015-2021**

In terms of Rural Settlement Policy, (3.3), the site is located in a **Structurally Weaker Area** which is described as one which exhibits characteristics such as persistent and significant population decline over an average of 2 census periods (2006-2011). These areas have low population density averages and few planning application numbers. Many of these areas, by virtue of their location and topography are isolated. In these areas, the challenge is to stop sustained population and economic decline with a focus on both key villages and rural areas.

**Objectives RS1-RS6**, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

There is one further objective which relates specifically to **Structurally Weaker Areas**, namely, **RS-12** which seeks to accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in

matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas.

Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Secondary Special Amenity Area**, which are described as constituting sensitive landscapes which can accommodate a limited level of development, which will depend on the degree to which it can be integrated into the landscape. This is described as an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to SSAAs. These include a requirement for dwellings to be designed sympathetically to the landscape, to be sited such that they do not negatively impact the landscape, that they are not unduly obtrusive in terms of siting and design, with an emphasis on the retention of trees and hedgerows.

**Vacant buildings** - The priority is to reduce vacancy rates and to facilitate the replacement and renovation of existing structures for residential use (3.3.1).

**Objective RS-16** seeks to give favourable consideration to applications for the conversion and reuse of existing traditional farm buildings or rural houses and at 3.3.5, favourable consideration will be given to the renovation of existing structures for use as either permanent homes or as holiday homes.

**Holiday homes** – Objective **RS-13** states that one-off holiday/second homes will not be permitted in rural areas, but the replacement, renovation and restoration of existing premises will be encouraged where appropriate.

**Granny flats/second homes** – Objective **HS-12** seeks to ensure that granny/family flats are integral to the existing dwelling house, capable of being re-integrated to the main house and subordinate to the main dwelling house.

## **5.2. Natural Heritage Designations**

5.2.1. The following European sites are close to the site.

Kenmare River cSAC (002150), which is directly adjacent to the site of the landholding, c.200m to the west of the structure the subject of the change of use application. The site is located approximately 6km from Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment cSAC (000365); c.2km from Old

Domestic Building Askive cSAC (002098) and approx. 3km from Drongawn Lough cSAC (00335).

## **6.0 The Appeal**

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

The appeal is a first party appeal against the decision to refuse planning permission. The main points raised may be summarised as follows:

#### **1. Overdevelopment of the site**

It is disputed that the proposal would result in overdevelopment because the structure already exists and is located on a large site within a relatively wooded area, being c.100m from the nearest neighbouring dwelling. The site is in excess of 5 acres with adjoining lands also being in the appellant's ownership.

#### **2. Condition 1(a) of 05/2989 not an impediment to development**

It is considered that if an application for a change of use of the building is merited, surely this condition could not prevent a positive outcome.

#### **3. Compliance with the County Development Plan**

- The proposed development relates to a change of use to residential development, not for a holiday home and as such does not contravene Objective RS-13. The CDP also makes provision for people who have family ties to rural areas and their need for a dwelling in the area. As the appellants are permanent residents of the rural area. It is considered that they would comply with the need for a dwelling in the area.
- Section 3.3.5 also provides for the renovation and restoration of existing buildings and to the completion of derelict and vacant buildings for use as primary residences and as holiday homes. It is submitted that the leisure building falls within this category of an existing structure. It is already serviced with water, electric, heating and a wastewater treatment system.
- The proposed development is not for a granny flat. However, permission is sought for the residential use of the building which would be ancillary to the

main residence. It is of great importance to the appellants that they would have the option of inviting friends and family to stay in the building as guests.

- It is important to note that the proposal relates to an existing building which was built 14 years ago and not to a new build dwelling. The P.A. does not seem to differentiate between these two scenarios. Surely it is better that an existing serviced dwelling be utilised to its full potential, particularly in an area where many dwellings lay unoccupied for long periods of time. The building is in habitable condition and should be allowed to be occupied. The use as a gym/leisure building is no longer required.

## **6.2. Planning Authority Response**

The P.A. responded to the grounds of appeal on 28<sup>th</sup> November 2019. The following comments were made:

- (1) The existing structure was granted permission as an ancillary leisure building to assist a previous elderly owner of the property. Condition 1(a) of the original permission 05/2989 prohibited the structure from being used as a holiday/second home or for any other residential/commercial/agricultural uses. Had the original application sought a separate residential unit, it is unlikely that the said application would have received a positive response.
- (2) The proposed development would result in substandard residential development, overdevelopment of the site and in 2no. separate dwelling units on the site. The proposal would materially contravene a condition of planning which prohibited the structure being used as a residential unit and would be contrary to both Obj. RS-13 (which prohibits holiday home development in the rural countryside) and Section 13.4 of the CDP which prohibits granny/family flat developments from being separate, detached units to the main dwelling house. The proposal would set an unwanted precedent for similar such development in the rural area.

## **6.3. Observations on the Grounds of Appeal**

Observation received from Eugene and Lilly Ross on 5<sup>th</sup> December 2019. The points made may be summarised as follows:

- Agree with P.A. that the proposal would result in overdevelopment of this sensitive rural site and would set an unwanted precedent for similar development. An Taisce stated in relation to a previous application for a similar development (18/483 – invalid) considered that it would add to the high number of dwellings in the vicinity and create a precedent for similar development.
- The appellants’ family ties to the area re disputed as there is no evidence to substantiate this claim and as they only moved to the area in 2017.
- The appellants would have been aware of the restrictions imposed by condition 1(a) of 05/2989 when they purchased the property in 2017. Thus, they would have been aware that it could not be used for any residential, commercial or agricultural use or as a holiday home.
- No need for additional residential capacity has been demonstrated. It is claimed that the main residence is a “large architecturally designed 2,626ft<sup>2</sup> three ensuite bedroom residence”.
- The assertion that the occupation of the building for residential purposes would be better for the community is disputed as it would result in every owner of an existing garage, outhouse, shed, farm building, leisure facility etc.in co. Kerry being granted residential status, which would undermine the policies in the CDP.
- It is disputed that the leisure building is located more than 100m from other residential properties. It is stated that there are 3 existing dwellings within 100m of the structure and that currently very loud music is played from the building, which causes disturbance to the observers and to all neighbours in this quiet wild-life rich area.

## **7.0 Assessment**

- 7.1.** It is considered that the main issues arising from the appeal relate to compliance with Settlement Policy, including policies relating to granny flats and holiday homes in rural areas, as well as compliance with conditions of previous planning

permissions on the site and with the policy in the Rural Secondary Special Amenity Areas.

## **7.2. Compliance with Settlement policy**

- 7.2.1. The site is located in a Structurally Weak Area, which is one where the population levels have been in significant decline for some time and are generally remote and isolated areas where the key challenge is to stop the sustained economic and population decline. The policy in this area is to accommodate demand for permanent residential development as it arises, subject to normal planning criteria, as well as the protection of important landscapes and environmentally sensitive areas (Obj. RS-12). The site is located in a particularly remote and isolated area. The public road leading to the private road serving the site is c.1km in length and the site is located a further 200m along a private roadway. There are very few houses located along these roads. As such, the proposed development is generally in accordance with the requirements of RS12 – Structurally Weak Areas.
- 7.2.2. The site is quite unusual in that the land area is quite large at 2.28ha, yet it is a site of a single residential dwelling unit, and not a farm holding. The structure that is the subject of the current proposal is also unusual in that it was permitted in principle at the time of the grant of planning permission for the main house as an ancillary domestic structure on the site with its own wastewater treatment unit, water supply, electricity supply and independent access from the private road serving the site. The structure is also quite removed from the main dwelling, being c. 135m away with woodland occupying the intervening space. This permission was initially granted 20 years ago and the structure was built some 15 years ago, with permission to be used as a private gym associated with the main house on the site. Its use as a holiday/second home was also prohibited, as was its sale to a separate owner. As the site has recently changed hands, the new owner no longer needs the structure for the purposes for which it was initially built. The appellant seeks to change the use to that of guest accommodation associated with the main house for visiting members of the family and/or friends, which would be akin to a granny/family flat.
- 7.2.3. Although the Development Plan does not favour the construction of new one-off dwellings in the countryside for use as holiday/second homes, (RS-13), it will give favourable consideration to proposals for the conversion and re-use of existing

buildings, particularly where they are vacant, for use as either a permanent home or as a holiday home. It is stated at 3.3.4 that in the context of the promotion of agri-tourism, consideration will be given to units of holiday accommodation on agricultural holdings which remain an integral part of the landholding, where the units are sited within/adjacent to the farm complex. Although this property is not an agricultural/farm site, the proposed development would bear some similarities to this approach. It is further noted at 3.3.5 that the restoration/renovation of existing and vacant buildings in the rural countryside for use as permanent and holiday home accommodation would be given favourable consideration, as set out in Objective RS-16. Matters that should be considered include the specific location and condition of the structure, the scale of any works required to upgrade the building to modern standards, and in situations where safe access is available and where acceptable wastewater disposal arrangements are available.

- 7.2.4. The proposed development would require minimal works to upgrade the building to modern standards as it is in good condition and has been in use as part of the original residential landholding for 15 years or so. It is also serviced by means of a private WWTP, water supply, independent access etc. The structure also appears to be structurally intact and “exhibits the physical characteristics of a dwelling house”. It is located within a secluded site in a remote and relatively isolated area, and is intended to be used as an ancillary structure as an integral part of the landholding. As such, it is considered that the proposed change of use of the structure would generally accord with the policy objectives RS-13 and RS-16. It is further considered that the proposal would generally be in accordance with the overall intent of the policy on granny/family flats, (HS-12) with the exception that it is physically removed from the main house by c.135m. Thus, it would not be possible to “re-integrate it into the main house”, but could still be considered as “subordinate to the main dwelling house”. However, it is not a new structure, having been constructed at the time of the erection of the main dwelling and used as an integral part of the main use of the site ever since, albeit with a prohibition on its use as a holiday home. This matter will be addressed below.

### **7.3. Compliance with condition 1 of 05/2989**

- 7.3.1. Condition 1(a) restricted the use to a private leisure facility ancillary to the existing private residence on the site. Condition 1(b) prohibited its use as a holiday home,

second home or for any other residential, commercial or agricultural uses. It was further stipulated that the existing dwelling and the proposed structure shall remain as one integral unit under one ownership and that neither properties can be disposed of separately.

- 7.3.2. It is considered that apart from the restriction on the use imposed by Condition No. 1 of the parent permission regarding use as a private leisure facility ancillary to the main residence, and the prohibition on its use as a holiday home, the proposed change of use to ancillary residential accommodation would generally be in accordance with the suite of policy objectives for the area. In the event of a refusal of planning permission, the likelihood is that the structure will remain vacant and could become dilapidated. This would not be in accordance with the policy framework for the area which seeks to prevent such situations from arising by encouraging the re-use of vacant buildings for residential use.
- 7.3.3. Given that the structure does not require to be extended or altered in any significant way, that it is fully serviced and accessed independently, it is considered that it would be in the interests of the proper planning and sustainable development of the area to permit the change of use. However, the general terms of Condition 1 of the parent permission should be adhered to in that it should be required to continue to be used as an integral part of the overall landholding and that both structures should remain as one integral unit under a single ownership. In this way, it is considered that the proposed development would not materially or fundamentally contravene the terms of this condition, as it would remain as a single planning unit with the same overall principal land-use of residential.
- 7.3.4. It is further considered that a grant of permission in this instance would not create an undesirable precedent, due to the unusual circumstances of the case, and given the relatively remote and isolated location of the site in a Structurally Weak Area. These circumstances include the fact that the building was built c.15 years ago with permission for a use ancillary to the residential use of the main dwelling on the site, that the site is unusually large (2.28ha) and very well screened with woodland within and surrounding the site and that very little in the way of alteration is required to facilitate the change of use.

## **7.4. Visual amenity – Rural Secondary Special Amenity Area**

- 7.4.1. The proposed development must also comply with the provision relating to protection of the landscape as it is located within a Rural Secondary Special Amenity Area. Development proposals must be designed sympathetically to the landscape and be located on sites that do not negatively impact on the landscape character and such that they are not unduly obtrusive in their siting and design.
- 7.4.2. It is considered that the siting of the proposed dwelling on a site which is partially wooded and is well set back and screened from the public road and any sensitive area of the landscape, together with the design of the structure, with its low height, and traditional design that the proposed development would be well integrated into the landscape. As such, the proposed development would comply with the provisions for the Rural Secondary Special Amenity area, other than the housing need element.

## **7.5. Appropriate Assessment**

- 7.5.1. The P.A. reports screened out appropriate assessment. It is noted that the closest European site is Kenmare River cSAC(002150), which is directly adjacent to the site of the landholding, c.200m to the west of the structure the subject of the change of use application. The site is located approximately 6km from Killarney National Park, Macgillycuddy Reeks and Caragh Lake Catchment cSAC (000365); c.2km from Old Domestic Building Askive cSAC (002098) and approx. 3km from Drongawn Lough cSAC (00335).
- 7.5.2. Given the nature and small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

## **8.0 Recommendation**

- 8.1. It is recommended that planning permission be **granted** for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Kerry County Development Plan 2015-2021, to the location of the site in a Structurally Weak Area, to the nature and scale of the site

and of the development and to the existing pattern of development in this remote location, it is considered that subject to compliance with the conditions set out below, the proposed development would not materially contravene the County Development Plan or a condition of a previous planning permission, would not seriously injure the amenities of the area, or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 8<sup>th</sup> day of November 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, the structure shall be used as guest accommodation ancillary to the main dwelling house on the site only. The proposed guest accommodation unit shall be occupied together with the main dwelling house as a single integral unit, in single ownership and shall not be sold, let or otherwise transferred or conveyed, save as part of the existing dwelling house on the site, as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.

**Reason:** In the interests of residential amenity.

3. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provisions replacing them, no room in the proposed guest accommodation unit shall be used for the purposes

of providing overnight paying guest accommodation unless authorised by a prior grant of planning permission.

**Reason:** In the interests of residential amenity.

4. 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.

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Mary Kennelly  
Senior Planning Inspector

25<sup>th</sup> March 2020