



An  
Bord  
Pleanála

## Inspector's Report ABP317138-23

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|-------------------------------------|---|
| <b>Development</b>                  | Retention of dwelling with attic conversion as constructed, on revised site boundaries. |
| <b>Location</b>                     | Doon West, Ballybunion.   |
| <b>Planning Authority</b>           | Kerry County Council.   |
| <b>Planning Authority Reg. Ref.</b> | 23220   |
| <b>Applicant(s)</b>                 | Mossie and Eileen Nelligan  |
| <b>Type of Application</b>          | Retention   |
| <b>Planning Authority Decision</b>  | Refuse permission   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Mossie and Eileen Nelligan  |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 17th August 2023.   |
| <b>Inspector</b>                    | Ann Bogan   |

## 1.0 Site Location and Description

- 1.1. The site is located on the northern side of Ballybunion, Co Kerry, off Doon Road (R551), in the townland of Doon West. The site is in a 'backland' courtyard type location accessed via a narrow cul de sac right of way between two dwellings.
- 1.2. The site which is the subject of the appeal encompasses the dwelling, an unenclosed side yard area with gravelled surface and a shed in poor condition. No amenity area to serve the house is indicated in the planning application drawings.
- 1.3. The subject dwelling consists of a ground floor with hipped roof and attic space lit by skylights and in use for habitable rooms. It fronts on to the access laneway and yard and backs directly on to of an adjoining property to the south. The dwelling was occupied at the time the inspection and the occupant indicated he and his family are renting it.
- 1.4. A further dwelling with a pitched roof and wooden veranda is located to the west, constructed along the western boundary of the yard and is in the same ownership as the subject dwelling. A roughly surfaced area, the site of a now demolished shed, adjoins the south side of this dwelling.
- 1.5. There is an undeveloped gravel surfaced area to the north of the access lane, not part of the site, which is in use for car parking.

## 2.0 Proposed Development

- 2.1. The main elements in the retention of the dwelling as constructed are:
  - Retention of attic conversion containing two bedrooms and a bathroom, with three rooflights to the south.
  - Retention of elevational changes to the existing house
  - Changes to the site boundary previously permitted.

The four bedroomed dwelling is connected to public water and sewerage services.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Kerry County Council decided to refuse permission for the following reasons:

1. The proposed development would contravene materially conditions 1 and 3 attached to Planning Reg. No. 08/2224, an existing permission for development of this site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would constitute over development of this confined site contributing to a lack of adequate private open space, resulting in substandard residential development which would seriously injure the amenities of the occupants of the dwelling. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed development would seriously injure the amenities and depreciate the value of the adjoining residential property by reason of overlooking and loss of privacy and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officer noted the history of refusals on the site and the non-compliance with conditions of the previous permission and concluded that 'the proposed development is likely to impact negatively on the amenity of the adjoining dwelling due to overlooking and would impact on the amenity of the occupants of the proposed development due to lack of private amenity space and recommended refusal of retention permission. The Planning Officer's report formed the basis of the planning authority's decision.

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

Biodiversity Officer: Concluded the development would not have an impact of on the nearby SAC.

## 4.0 Planning History

**300155-17 (Kerry Co Council 17/825)** Decision to refuse permission by Kerry Co Council for retention of attic conversion and to retain elevational changes to existing. Refused on appeal by An Bord Pleanala, for the following reasons:

1. Having regard to the restricted and backland nature of the site and to the established pattern of development in the surrounding neighbourhood, it is considered that the development proposed to be retained by reason of its scale, form and design would constitute overdevelopment of a limited site area, would result in inadequate open space and would be visually obtrusive on the streetscape and out of character with development in the vicinity. The development proposed for retention would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.
- 2. The development proposed to be retention would contravene materially conditions attached to an existing permission for development on this site, namely, conditions numbers 1 and 3 attached to the permission granted by Kerry County Council on the day of 23rd day of December, 2008, under planning register reference Number 08/2224. The development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

**08/2224** Permission granted by Kerry Co Council for erection of an A roof on existing structure with velux windows to the rear and attic converted for storage, subject to conditions:

- Condition 1: that drawings be submitted showing roof to be hipped and pitched at 35 degrees and dwelling to be maximum height of 5.4m
- Condition 2: No part of the dwelling shall encroach or overhang adjacent site boundaries.
- Condition: 3 Attic to be for storage purposes only and not for living accommodation.

**07/3406** Permission refused by Kerry Co. Council to erect roof with velex roof lights to rear and a window to the side with living accommodation in roof space of house.

Refusal reasons included that it would be visually dominant relative to existing low lying roofs, would be out of keeping with existing developments and injurious to visual amenity of the area.

**PI 08. 221766** (Kerry Co Council **06/3350**) application to put pitched roof on flat roofed dwelling house and have it converted to include bedrooms and bathrooms with velux windows on same. Kerry Co Council - decision to grant subject to conditions. Bord Pleanala refused permission on appeal for reasons of overdevelopment on a restricted site, poor quality private open space, overlooking and overshadowing of adjacent properties, visually incongruous and would seriously injure amenities and properties in the vicinity.

## 5.0 Policy and Context

### 5.1. Development Plan

Kerry County Development Plan 2022-2028 Volume 1 Section 4 Towns and Villages includes an objective to support development of infill lands for housing development:

KCDP 4-27 Prioritise the regeneration of underused town centre and brownfield / infill lands in order to achieve the sustainable delivery of new housing within the existing urban footprint of settlements in the County.

Listowel Municipal District Local Area Plan 2020-2026: Site is located within the development boundary of Ballybunion on land zoned R2 - existing residential, in the LAP.

Kerry County Development Plan Volume 6 Development Management Guidance

#### 1.5.4.6 Private Open Space

- All houses should have an area of private open space of a suitable gradient, exclusive of car parking, to the rear of the building line. The minimum area of private open space to be provided shall be in accordance with Table 1 for all new residential units.
- The prescribed private amenity space will allow for a private amenity area, which can accommodate the storage of bins/garden shed etc, and the provision of an area for vegetable growing, etc. Reduced quantum may be

considered in respect of well-designed high-quality development where it can be demonstrated by the applicant the space is usable, appropriately located & shaped and of high quality

It should be noted that housing developments which provide private open space at the minimum standard throughout the scheme will be discouraged.

Table 1: Minimum Private Open Space Requirements for Dwelling Units

| No of bedrooms      | Minimum Private Open Space |
|---------------------|----------------------------|
| 1-2 bedroom         | 50 sqm                     |
| 3 bedroom           | 60 sqm                     |
| 4 bedroom (or more) | 75 sqm                     |

## 5.2. Natural Heritage Designations

Lower River Shannon SAC 002165 is approximately 65m from the site.

## 5.3. EIA Screening

5.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Appeal is accompanied by revised drawing showing land in appellants' ownership, revised site layout drawing showing 'green area', and revised floor plans and elevations.
- Refusal Reason 1 refers to compliance with condition 1 of Planning Reg 2224/08. It was complied with as the roof is hipped and pitched at 35 degrees

as required. Roof height is 5.972m rather than 5.4m, and this minor error should be accepted as a builder's error.

- Attic space was to be used for storage purposes only. Contends that the regulation re attic space for storage only should be changed to allow for present day needs. There is a housing crisis and Kerry Co Council erred in not allowing attic space to be used for residential purposes.
- Refusal Reason 2 – Amenities of the occupants. Revised layout plan put forward relocating one car space across the road and retaining one on same side. This will allow a far greater area of green space which with new door on west elevation would give occupants access to the green area. This arrangement would provide adequate green space.
- Reason 3 Depreciate value and overlooking. The property and its surroundings have been improved since purchased and this increased value of property in area.
- If overlooking to the south is an issue, appellants are prepared to move bedroom rooflights to west and east elevations as shown on drawing. Bedroom 4 would overlook the new green area and bedroom 3 an existing hipped gable.
- Window on east side mentioned in Planner's report looks on to a blank gable on an enclosed area and therefore there is not overlooking.
- There were no objections or submissions to the application for retention.
- Using the ground floor of the bungalow means it can only be used for two. If the first floor was available a family could be accommodated.

## 6.2. Planning Authority Response

- None

## 6.3. Observations

- None

## 6.4. Further Responses

- None

## 7.0 Assessment

7.1. Having considered the documentation submitted with the application, the grounds of the appeal, the revised drawings submitted with the appeal, the history of applications on the site and the policies of the Development Plan and Local Area Plan I consider the main issues to be considered in the appeal are:

- Planning history
- Impact on amenities and character of the area
- Adequacy of amenities for the occupants of the dwelling
- Appropriate Assessment

## 7.2. Planning History

- 7.2.1. Permission was granted for alterations to the dwelling under 08/2224, subject to conditions restricting the height and pitch of the roof and restricting the attic to storage space. Permission for retention of the alterations as constructed (the changes were, in summary two bedrooms and bathroom located in the attic and a higher and steeper roof than permitted) was refused by the Planning Authority and by An Bord Pleanala on appeal (300155-17), as outlined in Section 4.0 above, because it was considered overdevelopment, visually obtrusive, lacked amenity space, and was not compliant with the conditions of the original permission.
- 7.2.2. There have been some changes since the 2017 application (300155-17). I note the site boundary has been reduced from that shown in the previous application, with the yard area north of the house omitted. The 'chalet' structure which was directly abutting the south wall of the subject house has been removed and its site now serves as a yard/amenity area for the recently renovated house to the east. This is accurately represented on the site layout plan accompanying the application (however, I note the revised drawings submitted with the application erroneously show the chalet as existing). An adjoining shed to the west of the on-site shed in the ownership of the applicant has also been removed.



### **7.3. Impact on amenities and character of the area**

- 7.3.1. The existing three rooflights, lighting two bedrooms and a bathroom, which are on the south side of the dwelling, look out over the yard of the adjacent property. The amended drawings submitted with the appeal propose relocating the bedroom rooflights to the east and west hipped roofs which would eliminate the potential for overlooking of the yard, and would not overlook a public road or impact on residential amenities of other properties. The bathroom rooflight would remain but would be changed to obscured glass to avoid overlooking. The revised proposals would therefore largely address the issue of overlooking of the neighbouring property.
- 7.3.2. In the 2017 application adjoining owners alleged a window had been constructed from the house looked into their chalet, although the applicants refuted this. In the current application a narrow high level bathroom window faces into the adjoining yard and seems to be boarded up from inside the dwelling so does not, at present, overlook the new yard area. If permission were to be granted, a condition requiring the window to be of obscured glass and either fixed or opening inwards only, would address potential for overlooking.
- 7.3.3. The dwelling as constructed has a 40 degree pitched and hipped roof which is approximately 6m in height to the roof ridge line, as opposed to the 35 degree roof, and 5.4m ridge height permitted by condition 1 of planning ref 08/2224. The two adjacent buildings to the east also have pitched roofs although somewhat lower than the subject dwelling. It appears from earlier applications that there were a number of other flat roofed structures in the vicinity in the past but these have largely been either demolished or in one case (the dwelling to the west) may have been re-roofed with a pitched roof.
- 7.3.4. In my opinion, although not fully in accordance with the permission, the pitched roof as constructed is not significantly out of keeping with other buildings in the immediate area, and is not obtrusive or unduly overbearing when viewed from the road to the south or the yard from the north. I am satisfied that it does not have a negative impact on the visual amenities or character of the area.

### **7.4. Amenities of the dwelling**

- 7.4.1. The dwelling fronts onto the access road and backs directly onto the neighbouring property. The application indicates a shed in poor condition and an unenclosed

parking area for two cars to the west of the dwelling but does not include any outside private amenity area for occupants of the dwelling. This is a significant deficit, particularly as it is a four-bed house which could accommodate a family, including children. I note the Kerry County Council Development Plan Development Management Standards and Guidelines generally seeks at least 75sqm of private open space for a 4 bedroomed house, excluding parking area (Vol 6 Section 1.4.5.6).

- 7.4.2. The revised drawings submitted with the appeal show the full extent of the applicant's land holding. The revised site layout drawing submitted with the appeal also shows an incomplete red line partially enclosing an area larger than the 'red line' site boundary as indicated in the planning application. Its purpose is unclear. In any case, the site boundary as indicated in the application remains the relevant site boundary for the purposes of this appeal.
- 7.4.3. The revised layout plan shows one of the car parking spaces relocated from the site to the yard area in the applicants' ownership opposite the site; and a small area to the rear of the remaining parking space within the site is shown coloured green. The drawings also indicate a 'green area' on land adjoining the site to the west. This is in the ownership of the applicant, but is not part of the site boundary as submitted with the application, and there is no indication that it will be dedicated private open space for the occupants of the house. There are no proposals to enclose either the open area beside the house or the extended 'green area'.
- 7.4.4. In my opinion, the revised proposals are not sufficient to ensure an adequate private amenity space for the occupants of this four bedroomed dwelling even taking the urban backland location into account, and the level of such space proposed within the site boundary is well below the recommended minimum Development Plan standards,. I believe the lack of suitable private open space would result in a sub-standard development which would have a serious impact on the residential amenities of the occupants and would constitute overdevelopment of this restricted site. I consider therefore that the development would be contrary to proper planning and sustainable development of the area.

## 7.5. **Appropriate Assessment Screening**

7.6. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built-up urban area, and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS.

## 8.0 Recommendation

8.1. I recommend refusal of permission for retention of the development.

## 9.0 Reasons and Considerations

Having regard to the restricted and 'backland' nature of the site it is considered that the development proposed to be retained, by reason of its scale, form and design, would constitute overdevelopment of the site, resulting in inadequate private open space to serve the dwelling, which would seriously injure residential amenities and would result in a sub-standard development, and could create a precedent for other similar developments and would therefore be contrary to proper planning and sustainable development of the area.

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.

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Ann Bogan  
Planning Inspector

29<sup>th</sup> August 2023