

An  
Bord  
Pleanála

## Board Order ABP-314780-22

---

### Planning and Development Acts 2000 to 2022

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 22/767**

**Appeal** by Danny O'Sullivan care of MOL Consulting Engineers Limited of Kilmurry Business and Technology Park, Kilmurry, Kenmare, County Kerry against the decision made on the 12<sup>th</sup> day of September, 2022 by Kerry County Council in relation to the application by the said Danny O'Sullivan for retention of elevational changes made to the house, permission to convert the attic area of the house to habitable accommodation and make associated alterations to the external elevations of the house, permission to install a mechanical treatment tank, tertiary filter and infiltration area, permission to construct a carport, retention of the internal stairs and first floor area of the garage, retention of elevational changes made to the garage and permission to install a new roof window in the garage and retention of the house and garage within revised site boundaries, all at Rossacoosane, Kenmare, County Kerry (which decision was to grant subject to conditions retention of elevational changes made to the house, retention of the house and garage within revised site boundaries, permission to install a mechanical treatment tank, tertiary filter and infiltration area, and permission to construct a carport and to refuse permission to convert the attic area of the house to habitable accommodation and make associated alterations to the external elevations of the house, retention of the internal stairs and first floor area of the garage, retention of elevational changes made to the garage and permission to install a new roof window in the garage).

## **Decision**

**GRANT permission for retention of elevational changes made to the house, retention of elevational changes made to the garage, retention of the house and garage within revised site boundaries, installation of a mechanical treatment tank, tertiary filter and infiltration area, and construction of a carport based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission for conversion of the attic area of the house to habitable accommodation and make associated alterations to the external elevations of the house, installation of a new roof window in the garage, and retention of the internal stairs and first floor area of the garage based on the reasons and considerations marked (2) under.**

## **Reasons and Considerations (1)**

Having regard to the nature, extent and location of the proposed development and development proposed to be retained, the planning history of the site and taking into account the documents submitted with the planning application and the appeal, the grounds of appeal and observations received, and the policies and objectives of the Kerry County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposed development and development proposed to be retained would not seriously injure the residential amenities of the area, would not negatively impact on the visual amenities of the area, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 6<sup>th</sup> day of September, 2022 and the 12<sup>th</sup> day of September, 2022, 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 retained, carried out and completed in accordance with the agreed particulars.

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

2. The use of the dwelling shall be as a primary, permanent, all year-round residence and shall not be used as a holiday home or second home.

**Reason:** In the interest of the proper planning and sustainable development of the area.

3. The existing dwelling and garage, and proposed carport, shall be retained as one integral unit and the garage and proposed carport shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To restrict the use of the property in the interest of residential amenity.

4. The garage shall be used for private domestic storage purposes only and shall not be used for any commercial, habitation or agricultural purposes.

**Reason:** In order to regulate the use of the site.

5. The carport shall be used for private purposes only and shall not be used for any commercial, habitation or agricultural purposes.

**Reason:** In order to regulate the use of the site.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

7. 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 commencement of development. This scheme shall include the planting of native species to provide screening along the boundaries of 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.

8. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, as amended, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

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

9. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and, thereafter, shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

10. 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, as amended. 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.

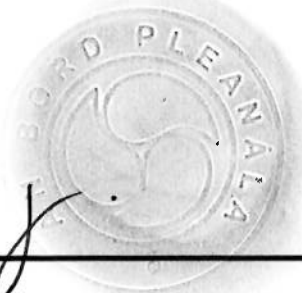

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

## **Reasons and Considerations (2)**

1. The proposed conversion of the attic to habitable accommodation would result in a significantly increased hydraulic load on the proposed wastewater treatment system. Having regard to the fact that the site assessment report shows that the site failed both the sub-surface and surface site suitability percolation test, the Board was not satisfied, on the basis of the information on file, that the increased hydraulic load could be adequately treated and disposed of on site. The proposed development, if permitted, would result in ground and surface water contamination and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The development proposed to be retained would materially contravene condition number 2 attached to an existing permission on the site for development (An Bord Pleanála reference number PL 08.223981). The development, if permitted, would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission for the conversion of the attic of the house for habitation, the Board agreed with the Inspector that the proposed conversion of the attic to habitable accommodation would result in the creation of a potential increase in hydraulic load (as set out in section 7.2.3 of the Inspector's report) and this would be a concern. However, the Board considered, and agreed with the decision of the planning authority, that the concerns could not be allayed by the imposition of conditions with regard to a wastewater treatment system.



---

Mary Cregg

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board**

Dated this 18<sup>th</sup> day of January 2024.