



An
Bord
Pleanála

Inspector's Report

Development	Retain private store and permission to alter entrance door at East End, Cahersiveen, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/2524
Applicant(s)	Michael Daly
Type of Application	Permission
Planning Authority Decision	Refuse
Appellant(s)	Michael Daly
Observer(s)	Catherine McCarthy
Date of Site Inspection	1 st September 2016
Inspector	Mary Crowley

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site with a stated area of 0.018 ha is located within the development boundary of Cahirsiveen on the eastern side of the town centre. The site fronts onto the N70 with a local road running along the length of the western boundary. There is a busy petrol station / retail / restaurant and associated rear surface car park immediately to the west of the site. The general area is characterised as commercial and residential. The site itself comprises an existing end of terrace two story house that fronts onto the N70 with a store / garage to the rear that has an opening onto the adjoining local road.
- 1.4 A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file.

2.0 PROPOSED DEVELOPMENT

- 2.1 The application for permission for the retention of a store (47.9 sqm) for private use as constructed and permission to alter entrance door to store was submitted on 16th March 2016.
- 2.2 **Unsolicited further information** was submitted on 12th April 2016 reducing the width of the new road side entrance door from 3.1m to 1.8m.
- 2.3 **Revised public notices** were sought and submitted on 24th May 2016. In the accompanying cover letter the applicant sets out the following response to the observations / objections recorded on the planning file (see Section 4.0 below for summary of submissions):
- Rear wall of store extends c 700mm above the boundary wall which has been lowered in the past which would have been in line with the height of the store
 - Two storey building erected on the observer's / appellants property totally overshadows her yard
 - Store connects the northern yard to the house
 - All rainwater will be conveyed into the applicant's property and will not affect the adjoining property. Observers / appellants fascia and soffit overhangs into applicant's property.

3.0 TECHNICAL REPORTS

- 3.1 **Transportation Infrastructure Ireland (TII)** (x 2 reports) states that they will rely on the planning authority to abide by official policy in relation to development on / affecting national roads.
- 3.1 **Roads Transportation & Safety** (15th June) have no objection to the retention

provided that the proposed alteration works will be carried out in accordance with drawings submitted and completed within two months the decision.

3.2 The **Local Authority Planner** recommended that permission be refused for two reasons. The notification of decision to refuse planning permission issued by Kerry County Council reflects this recommendation.

4.0 OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY

4.1 There are two separate observation(s) / objection(s) recorded on the planning file from Catherine McCarthy whose property borders the appeal property. The issues raised relate to works starting without permission, overshadowing, height, proposed commercial use, fire safety access, health impact, rainwater, depreciation of property value and loss of residential amenity.

5.0 PLANNING AUTHORITY DECISION

5.1 Kerry County Council issued notification of decision to **refuse** planning permission for the following two reasons

1. It is considered that the vehicular traffic generated by the proposed development would endanger public safety by reason of traffic hazard, because:

- i) There is at present inadequate sightlines available when a vehicle exits the subject garage, thus endangering pedestrians using the public footpath and road users on the public road*
- ii) The close proximity of the entrance / exit of the garage to a busy junction with the N70 National Secondary Road and the L-11903 local road.*

2. It is considered that the proposed development by reason of height, scale and proximity to houses in the vicinity would constitute overdevelopment of the site and would seriously injure the amenities and depreciate the value of property in the vicinity by reason of overshadowing and would be contrary to the proposed planning and sustainable development of the area.

6.0 PLANNING HISTORY

6.1 There is no evidence of any previous appeal on this site. However, there was a previous planning application on this site that may be summarised as follows:

Reg Ref 15/906 - Kerry County Council refused permission for the retention of a garage as constructed for four reasons relating to traffic safety, loss of on-street parking and overdevelopment.

7.0 POLICY CONTEXT

7.1 The operative plan for the area is the **Cahersiveen, Waterville and Sneem Functional Area local area Plan 2013 – 2019**. The site is zoned **Mixed Use**.

8.0 GROUNDS OF APPEAL

8.1 The first party appeal has been prepared and submitted by Frank Curran Consulting Engineering Ltd on behalf of the applicant Michael Daly against the decision of Kerry County Council to refuse planning permission. The main issues raised in the appeals relate to:

8.2 **History** – The applicant was under the impression that the garage was an exempted development. As soon as enforcement proceedings were issued the applicant sought to regularise matters immediately.

8.3 **Refusal No 1** – As the building will be used as a private store which will serve the dwelling house there will be no traffic issues.

8.4 **Refusal No 2** – The maximum height of the building on the roadside is 3.25m and the height on the neighbour's side is 2.64m. The store is only marginally higher than the boundary walls at the roadside (photos submitted). Rainwater will discharge into a gutter which is in the applicant's property (drawings submitted).

8.5 The garage extends approximately 840mm above the present boundary wall. Submitted that this wall was slightly higher previously but was reduced in height by the previous owner of the adjoining property (applicant's sister). The amount of overshadowing will be minimal.

8.5 **Use** – The building will be used as a private store (turf, logs, coal, refuse bins and general domestic storage) to service the dwelling house

8.6 **Conclusion** – This private store will not create a traffic hazard and as the development is located in the town centre does not create a problem with regards to height and overshadowing.

9.0 RESPONSE OF THE PLANNING AUTHORITY

9.1 There is no response to the matters raised in the appeal(s) from Kerry County Council recorded on file.

10.0 OBSERVATIONS / SECTION 131 RESPONSES

10.1 There is one **observation** recorded on the appeal file (Section 131 response) from Catherine McCarthy. Comments raised may be summarised as follows:

- Building used for vehicles and a mechanical digger (photos attached)
- Little access for emergency services
- Height of wall
- precedent
- Depreciation of property values
- Overshadowing
- Restoration of the observer's garden

11.0 ASSESSMENT

11.1 Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Vehicular Access & Traffic Impact
- Residential Amenity
- Appropriate Assessment Screening
- Other Issues

12.0 PRINCIPLE / POLICY CONSIDERATIONS

12.1 This is an application for permission for retention of a store (47.9 sqm) for private use as constructed to the rear of an existing dwelling house and permission to alter entrance door to store (as amended) that provides direct access from the adjoining street. Having regard to the sites urban location, scale and elevational treatment of the proposed garage / store to be retained I am satisfied that the principle of the proposed scheme is acceptable at this location. In the interests of clarity and the protection of adjoining amenities it is recommended that should the Board be minded to grant permission that a condition be attached restricting the use of the garage / store for purposes ancillary to the enjoyment of the main dwelling only.

13.0 VEHICULAR ACCESS & TRAFFIC IMPACT

13.1 Kerry County Council in its first reason for refusal stated that the vehicular traffic generated by the proposed development would endanger public safety, that there were inadequate sightlines available when a vehicle exits the subject garage and the close proximity of the entrance / exit of the garage to a busy junction with the N70

National Secondary Road and the L-11903 local road. Essentially one of the key considerations in this appeal is traffic safety.

13.2 This is an urban site and as is often characteristic of such areas the site is proximate to busy commercial properties that generate high levels of traffic. In this case the appeal site is adjoining a busy petrol station, car repair garage and a large surface car park. While the store / garage to be retained opens onto a busy road and footpath I am satisfied that the vehicular movements generated by this proposed domestic development would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. However, it is recommended that should the Board be minded to grant permission that a condition be attached requiring that the entrance gate open inwards and that the entrance door to be a maximum of 1.8 metres wide as indicated on Drawing MDR1.

13.3 Overall I consider the proposal to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard

14.0 RESIDENTIAL AMENITY

14.1 Kerry County Council in its second reason for refusal considered the scheme to be an overdevelopment of the site that would overshadow adjoining properties.

14.2 Firstly I do not consider that the proposed development would have a significant negative impact on the character or visual amenities of the area. Furthermore, I am satisfied that the scale of the scheme does not overwhelm or dominate the parent dwelling or appearance of the main house or environs and that overall it is compatible with the surrounding area.

14.3 With regard to concerns raised with regard to rainwater it is recommended that should the Board be minded to grant permission that a condition be attached requiring that drainage arrangements, including the attenuation and disposal of rain water, comply with the requirements of the planning authority for such works and services.

15.0 APPROPRIATE ASSESSMENT SCREENING

15.1 Having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

16.0 OTHER ISSUES

16.1 **Devaluation of Property** - With regards to the concerns raised by the third party and the second reason for refusal that the proposed development will depreciate the value of property I would make the following comments. The proposal is for the retention of a store where draft Condition No 2 below restricts the use for purposes ancillary to the enjoyment of the main dwelling only located within an urban residential area that is proximate to the town centre and where it is reasonable to expect developments of this kind would normally be located. In my view the development proposed is not considered to be a bad neighbour in this context and I do not therefore consider that to permit this development subject to a use condition would lead to devaluation of property values in the vicinity. Accordingly, I am satisfied that this matter is not material to the consideration of this appeal in this instance.

16.2 **Development Contribution** - Kerry County Council adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) on 21st March 2011. The proposed development does not fall under the exemptions listed in the "Exemptions from Payment of Development Contributions" Section of the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Development Contribution in accordance with the Planning and Development Act 2000

17.0 RECOMMENDATION

17.1 Having considered the contents of the application, the provision of the Cahersiveen, Waterville & Sneem Functional Areas Local Area Plan 2013 - 2019, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

18.0 REASONS AND CONSIDERATIONS

18.1 Having regard to the location of the site within the town of Cahersiveen, the land use zoning objective for the site, the established residential use of the site, the pattern of development in the area, the nature and scale of the proposed development, and the policy considerations set out in the Cahersiveen, Waterville & Sneem Functional Areas Local Area Plan 2013 - 2019, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would constitute an appropriate form of development at this location, would be acceptable in terms of traffic safety and would, therefore, be in accordance with the proper planning and sustainable development of the area.

19.0 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 12th day of April 2016, 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. The permitted garage / store shall be used solely for purposes ancillary to the enjoyment of the main dwelling and shall not be used for commercial, trade or business purposes.

Reason: In the interest of proper planning and sustainable development and to protect the amenities of property in the vicinity

3. (a) The entrance gate shall open inwards, only, from the public road.

(b) The entrance door shall be maximum of 1.8 metres wide as indicated on Drawing MDR1.

Reason: In the interest of traffic safety owing to the lack of visibility at this location

4. Drainage arrangements, including the attenuation and disposal of rain water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

5. 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 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 An Bord Pleanála 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.

Mary Crowley
Senior Planning Inspector
30th September 2016