



An
Bord
Pleanála

Inspector's Report PL08.247551

Development	Permission to retain partially completed boathouse and permission to complete same.
Location	Waterville, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/834
Applicant(s)	Anthony Antoniadis
Type of Application	Retention and Completion
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party
Appellant(s)	William Cashman
Observer(s)	None
Date of Site Inspection	7 th February, 2017
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The proposed development site is located to the south-east of Waterville, Co. Kerry, on the shore of Lough Currane. The site is accessed via a narrow cul-de-sac road which serves a number of detached houses. The subject site is located at the end of this cul-de-sac and has a stated area of 0.7ha. The site is currently occupied by a large single storey detached house and has a winding drive from the cul-de-sac road. The site is elevated over Lough Currane and offers extensive views towards the east and south. The site itself, is located to the north west area of the Lough, and directly accesses the lough at the inlet at the head of the Currane River, which flows in a westerly direction from Lough Currane.
- 1.2. The site itself is regular in its overall shape with the south eastern boundary comprising the shore of the lough. Over the extent of the site, there is a considerable fall in levels from the house to the shore. The partially completed boathouse, the subject of this appeal, is located at the south western corner of the site.

2.0 Proposed Development

- 2.1. Permission is sought to retain partially completed boathouse and permission to complete same, at Waterville, Co. Kerry.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to three conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer reporting on this application, considered the development in terms of the requirements of the County Development Plan, the content of the planning application and associated reports and information presented, internal department reports and third party submissions, as well as the planning history

associated with the subject site. The report noted that the wall, which was refused retention permission by An Bord Pleanala ABP ref PL08.244945, has not been removed and that the matter is with the Enforcement section of Kerry County Council. The report further completed an EIA Screening as well as an AA Screening report. The report concluded that the development is acceptable and recommended that permission be granted.

3.2.2. Other Technical Reports

The Biodiversity Office of Kerry County Council presented a report in relation to the proposed development and concluded that the development was acceptable and a Stage 2 AA is not required.

The Fire Authority submitted a report advising no objection to the proposed development.

3.3. Prescribed Bodies

Transport Infrastructure Ireland submitted a letter advising no observations.

An Taisce made a submission in relation to the proposed development noting the previous reasons for refusal. It is submitted that the council should ensure that the proposed development does not take away from the surrounding environment, does not have adverse impacts on surrounding Natura 2000 site(s) and adheres to policies and objectives laid out in the Kerry County Development Plan, 2015-2021.

3.4. Third Party Observations

There is one third party objection noted in relation to the proposed development. The issues raised are summarised as follows:

- Planning history
- Unauthorised wall, previously refused by the Board, remains in place.
- The property has been under construction for 20 years and is rarely inhabited.
- Recent unauthorised works has resulted in silt-pollution of the lake. The proposed works will add to and prolong the existing situation.

- The visual amenity of Loch Coirean will be further adversely impacted upon by granting of planning permission.

4.0 Planning History

4.1. Subject site:

There is extensive planning history associated with the subject site, with planning permission for a house granted on the site under PA refs 91/1605, 92/1491 and 95/1946.

PA ref 97/1907: Permission granted for the construction of a garage adjacent to dwelling house.

PA ref 98/233: Permission granted to substitute new design, pergola and conservatory to house presently under construction and extend garage to include storage and drying room.

PA ref 99/3463: Permission was sought to retain conservatory and dining room extensions as constructed. Further information was sought but no response was submitted to the Planning Authority.

ABP ref PL08.244945 (PA ref 14/877): Permission granted by Kerry County Council for the retention of partially constructed boathouse, permission to complete boathouse and permission to retain 2.7m high wall and pillars as constructed. The decision was overturned on appeal and the Board refused permission for the development.

4.2. On Adjacent Sites:

PA ref 94/811: Permission granted for outline permission to erect a dwelling house at Waterville, Co. Kerry.

PA ref 95/1625: Permission granted William & Lynn Cashman permission to extend and alter residence at Waterville, Co. Kerry.

5.0 Policy Context

5.1. Kerry County Development Plan, 2015-2021:

5.1.1. Chapter 10: Natural Environment & Flood Risk Management:

Strategic Objectives:

NE-1: Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County.

NE-2: Ensure that the requirements of relevant national and EU legislation, including the Habitats Directive (92/43/EEC), the EU (Birds) Directive (79/409/EEC), the Environmental Impact Assessment Directive (85/337/EEC), the Water Framework Directive (2000/60/EC), and the Flood Directive (2007/60/EC), are met by the Council in undertaking its functions.

NE-4: Promote best practice with regard to natural heritage conservation and management.

NE-5: Ensure that the cumulative impacts are taken into account when evaluating the impacts of a particular proposal on biodiversity, particularly in relation to habitat loss and wildlife disturbance.

5.1.2. Section 10.2.2: European Designations (Natura 2000 network):

NE-11: Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

NE-12: Ensure that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall be permitted on the basis of this Plan (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions.

NE-13: Maintain the nature conservation value and integrity of all Natural Heritage Areas (NHAs), proposed Natural Heritage Areas (pNHAs), Nature Reserves and Killarney National Park. This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies

5.1.3. Chapter 12: Zoning & Landscape:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Section 12.2: *Landscape Sensitivity and Landscape Capacity*

Section 12.3: *Zoning:*

Section 12.3.1: *Zoning Designations:*

Rural Secondary Special Amenity: The landscape of areas in this designation is sensitive to development. Accordingly, development in these areas must be designed so as to minimise the effect on the landscape.

Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area, as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009).

Permission will not be granted for development which cannot be integrated into its surroundings. Development will only be permitted where it is in accordance with the provisions of Chapter 3.3.2.

5.1.4. Section 12.4: View and Prospects:

ZL-5: Preserve the views and prospects as defined on Map No's 12.1, 12.1a – 12.1u.

5.1.5. Chapter 13: Development Management – Standards & Guidelines

5.2. **Natural Heritage Designations**

The subject site is located immediately adjacent to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal reflect the submission made to Kerry County Council in the course of their assessment of the proposed development. The issues raised are summarised as follows:

- Planning history and submits that the unauthorised wall, previously refused by the Board, remains in place.
- The property has been under construction for 20 years and is rarely inhabited.
- The lakeshore has been dredged on two occasions since development began with no regard to the environment.
- A right of way exists along the waterfront. The development will obstruct this right of way.

6.2. Applicant Response

The First Party has submitted a response to the third party appeal. The submission is summarised as follows:

- In response to the previous ABP decision, the applicant completed a Natura Impact Statement.
- With regard to the wall, the applicant advises that as soon as this matter reaches conclusion, the wall will be taken down. The actual letter advises that the wall will be reduced to below 2m, thereby making same exempt from planning permission.
- There is no right of way along the lakeshore as stated.

It is requested that the Board see that the development conforms with the surrounding area and is in keeping with the proper planning and development of the area and subsequently uphold the decision of Kerry County Council.

6.3. **Planning Authority Response**

The Planning Authority has not responded to this appeal.

6.4. **Observations**

There are no observations noted in relation to this appeal.

7.0 **Assessment**

Having regard to the information presented as part of the planning application, together with the third party appeal, and having undertaken a site visit, I consider that the issues arising should be considered under the following headings:

- Visual impact
- Appropriate assessment
- Other issues

7.1. **Visual Impact**

7.1.1. The subject site is located within an area of County Kerry which has been designated as a Secondary Special Amenity area and as such, section 12.2.1 of the Plan is relevant. This section of the Plan provides that such areas are considered to constitute sensitive landscapes and that any development within same should be designed so as to minimise its visual impact. In addition, the Board will note that the wider area of Lough Currane is identified as an area of Primary Special Amenity, which requires a higher level of protection. In terms of the planning history of this site, the Board took the view that the site is located on the shores of Lough Currane, which is designated as a prime special amenity area, and I accept that this is a reasonable approach, given the location.

7.1.2. On the date of my site inspection, the gates to the property were locked and bolted so I could not gain access. I did however, take photographs from across the lake. In terms of the potential visual impacts associated with the boat house, I note the previous comments of the Board in terms of the significant tourism and fishery amenity of Lough Currane, and the conclusion that the development to be retained

would be inappropriate within this protected lakeside setting. While I acknowledge that the Board focused on the wall to be retained, I would submit that the visual implications of the boathouse will be more significant, given the lakeside location. I would have no issues with the overall design of the boathouse in principle, however, I consider that if permitted, it would represent a visually obtrusive element along the lake shore, and would set an undesirable precedent for similar type developments along the shore.

7.2. Appropriate Assessment:

- 7.2.1. It is the policy of the planning authority, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to conserve, manage and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County. Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.
- 7.2.2. On the basis that the proposed development site is located immediately adjacent to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (i.e. a designated Natura 2000 site), it is clear that the subject proposal must be screened for the purposes of Appropriate Assessment pursuant to the requirements of Article 6 of the Habitats Directive. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation has been designated as being of special conservation interest on the basis that it supports the following habitats and / or species:

- [3110] Oligotrophic waters containing very few minerals of sandy plains
(Littorelletalia uniflorae)
- [3130] Oligotrophic to mesotrophic standing waters with vegetation of
the Littorelletea uniflorae and/or Isoeto-Nanojuncetea
- [3260] Water courses of plain to montane levels with the Ranunculion
fluitantis and Callitriche-Batrachion vegetation
- [4010] Northern Atlantic wet heaths with Erica tetralix
- [4030] European dry heaths
- [4060] Alpine and Boreal heaths
- [5130] Juniperus communis formations on heaths or calcareous
grasslands
- [6130] Calaminarian grasslands of the Violetalia calaminariae
- [6410] Molinia meadows on calcareous, peaty or clayey-silt-laden soils
(Molinion caeruleae)
- [7130] Blanket bogs (* if active bog)
- [7150] Depressions on peat substrates of the Rhynchosporion
- [91A0] Old sessile oak woods with Ilex and Blechnum in the British
Isles
- [91E0] Alluvial forests with Alnus glutinosa and Fraxinus excelsior
(Alno-Padion, Alnion incanae, Salicion albae)*
- [91J0] Taxus baccata woods of the British Isles*

* denotes a priority habitat

- [1024] Kerry Slug (Geomalacus maculosus)
- [1029] Freshwater Pearl Mussel (Margaritifera margaritifera)
- [1065] Marsh Fritillary (Euphydryas aurinia)
- [1095] Sea Lamprey (Petromyzon marinus)
- [1096] Brook Lamprey (Lampetra planeri)
- [1099] River Lamprey (Lampetra fluviatilis)

[1106] Salmon (*Salmo salar*)

[1303] Lesser Horseshoe Bat (*Rhinolophus hipposideros*)

[1355] Otter (*Lutra lutra*)

[1421] Killarney Fern (*Trichomanes speciosum*)

[1833] Slender Naiad (*Najas flexilis*)

[5046] Killarney Shad (*Alosa fallax killarnensis*)

7.2.3. The previous application on this site for the retention and completion of the boathouse was determined by the Board on the basis that in the absence of a NIS, it was precluded for considering a grant of permission. As part of the current appeal, the applicant submitted an Ecological Survey and Impact Assessment as well as a Screening for Appropriate Assessment. The Ecology Survey sought to decipher the habitats present previous to the most recent works also evaluated¹. The results of the survey identifies that the waterbody corresponds to the Fossitt (200) habitat acid / oligotrophic lake (FL2) which also corresponds to the Annex 1 Habitat '*Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and / or of the Isoeto-Nanojuncetea [3130]*'. Reed & Large Sedge Swamp habitat occurs along Lough Currane. The habitats are evaluated as being of international importance as they occur within the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment SAC (site code 000365).

7.2.4. In terms of the impacts of the works carried out to date, the Ecological Survey Report submits that there is no evidence indicating that there has been loss of lake habitat, as the location of the partially constructed boathouse is on an area that was previously a terrestrial habitat, most likely one of the habitats evaluated as local importance that currently feature on the site. The report concludes that the impact of the works is evaluated as imperceptible negative – none. It is noted that the it appears that part of the reed and sedge swamp habitat at the margin of the lake, and associated substrate was excavated to facilitate boat movements to / from the boathouse. These works took place within the SAC and was confined to an area of 15m². The report also notes observable siltation in the vicinity of the works and concludes that the impact of these works is assessed as temporary – short term and

¹ The Board will note the reference to Lough Derg in the Ecological Survey, Section 2.2, but I am presuming that this is a typo.

slight negative (ie. noticeable ecological consequences outside the development boundary, but these consequences are not considered to significantly affect the distribution and / or abundance of species or habitats of conservation importance). In conclusion, the report suggests that reverting the works would result in an impact of greater significance than leaving it in situ. In the event of a grant of permission, a works method statement is included. The retrospective screening for AA has found that the works carried out and works required to complete the boathouse did not / would not affect any component of the Killarney National Park, Magillicuddy's Reeks and Caragh River Catchment Special Area of Conservation, the only Natura 2000 site potentially affected.

7.2.5. In terms of screening for AA, I also note the comments of the Local Authority Biodiversity Officer which considered the Ecological Report presented, and accepted the findings of same. The Biodiversity Officer and the Planning Authority concluded that the proposed development would be unlikely to have any significant impact on the Natura 2000 site. Having reviewed the available information, it is clear that the primary concern arising from the works carried out, and the works required to complete the boathouse, relate to the pollution of water, and the impact of such changes in the quality of the water on the species that depend on the fresh waters. The habitat on which the boathouse has been constructed is noted as being unsuitable for freshwater species. That said, I note that silting was still evident at the site when the Ecology Report survey was carried out in February 2016, a year after the original application was made with the works in place, although the AA Screening Report submits that the source of the silt in the Lake could be from the excavation associated with the boathouse and / or the groundworks carried out to plant the lawn where bare soils resulted in soil loss during times of rainfall.

7.2.6. The Applicant also prepared an AA Screening Report where the works undertaken and proposed works are described. I note that the works to the boathouse carried out to date are described as follows:

Reinforced poured 0.3m thick concrete walls 6.3m long x 4m wide and a poured concrete sill 0.9m x 6.03m as part of the boathouse construction.

The Board will also note the reference to the concrete wall, which does not form part of this appeal.

The report provides no information as to how the works were carried and I am unclear what (if any) measures were put in place so as to avoid the contamination of surface waters within the Natura 2000 site during the construction works. In terms of the impacts on the Lake, the AA Screening Report submits that the impact of the works carried out to date is not one of loss, but of disturbance, as no loss of lake area has occurred. It is considered that the impact is imperceptible negative in the short term.

- 7.2.7. In terms of AA, it is reasonable to conclude that on the basis of the information on the file, including the Ecological Survey and Impact Assessment Report, which I consider adequate in order to issue a screening determination, that the proposed completion works to the boathouse development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000365, Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation in light of its conservation objectives.

7.3. **Other Issues:**

7.3.1. Unauthorised Wall:

The appellant submits that the unauthorised wall remains in place despite the decision of the Board to the contrary. This is a matter of enforcement for Kerry County Council.

7.3.2. Right of Way;

The appellant submits that a Right of Way has existed for generations along the waterfront to facilitate the movement of farm animals between waterfront properties. A grant of permission to retain the structure will result in permanent obstruction of this RoW. There is no evidence presented to substantiate this case and is a civil matter.

8.0 **Recommendation**

I recommend that planning permission be refused for the proposed development for the following reason;

9.0 Reasons and Considerations

The subject site is located on the shores of Lough Currane, which is designated as a prime special amenity area in the Kerry County Development Plan 2015 – 2021, and the site is itself located within a designated secondary special amenity area. Having regard to its scale, extent and design, it is considered that the boathouse proposed to be retained and completed would be visually obtrusive in this highly sensitive landscape, particularly when viewed from Lough Currane, which is a significant tourism amenity. It is considered that the boathouse that is proposed to be retained and completed would constitute a discordant feature in this protected landscape, would seriously injure the visual amenities of the area, and would contravene the policies and objectives of the said Development Plan, which seek to protect the landscape of the county for its invaluable amenity and beauty, including Objective ZL 12-1 and would set an undesirable precedent for similar type developments along the lake shore. The development that is proposed to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

10th February 2017