



An
Bord
Pleanála

Inspector's Report PL.08.247930

Development	Change of use of ground floor shed / garage to a bedroom, ancillary to permitted house.
Location	Glor na Gaoithe, Rath, Cahredaniel, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/1093
Applicant(s)	Jane Dennehy
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	As Above
Observer(s)	An Taisce, John Vaughan, Michael Sheehan
Date of Site Inspection	26 th April 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area in south county Kerry situated approximately 3 – 4 km from Cahredaniel.
- 1.2. The local area is sparsely populated and the local landscape is characterised by hilly terrain and rocky outcrop features. The subject site is elevated and enjoys panoramic views over Kenmare River towards the Beara peninsula.
- 1.3. The existing house on the appeal site is a two-storey detached dwelling and the structure the subject of this appeal is a two-storey detached garage.
- 1.4. The detached garage is located approximately 25m from the main dwelling house on the appeal site.

2.0 Proposed Development

- 2.1. Planning permission is sought for a change of use of the existing ground floor storage area to a bedroom in the detached garage.
- 2.2. It is proposed that the bedroom will be used as an ancillary bedroom serving the main house on the site.

3.0 Planning Authority Decision

- 3.1. Kerry County Council decided to refuse planning permission for the following reasons;
 1. The proposed development would result in the provision of a detached dwelling unit within the curtilage of an existing dwelling house located in a rural, unserviced area. The proposal would contravene the Development Standards for residential development in rural and non serviced sites set out in Section 13.4 of the Kerry County Development Plan, 2015 – 2021, which specifies that ‘only one dwelling unit shall be connected to a single septic tank’. The proposed development would constitute substandard residential development, would set an unwanted precedent for similar development in the

rural area and would therefore, be contrary to the proper planning and sustainable development of the area.

2. Planning permission granted by An Bord Pleanala (appeal ref. 08.233209) for the change of use of the first floor of the shed / garage from private domestic storage to bedroom ancillary to the existing permitted house, subject to condition requiring that the ground floor was not to be converted into habitable accommodation and should remain in use as a domestic store / garage. Therefore the proposed development would materially contravene a condition attached to an existing permission and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- The proposal is contrary to Section 13.7 of the County Development Plan.
 - The proposed development would materially contravene a An Bord Pleanala condition under L.A. Ref. 09/13. This condition required that the ground floor was not to be converted to habitable space.
 - The proposed development would create an unwanted precedent for similar such development in the local area.
 - EIA not required in this instance.
 - No likely potential for significant effects of any Natura 2000 sites.
- 3.2.2. Submission; - There is a submission from An Taisce which recommends refusal of the proposed development.

3.3. Third Party Observations

There are 2 no. third party submissions and the issues raised have been noted and considered.

4.0 Planning History

10-Year Planning History

- L.A. Ref. 16/296 – Permission **refused** for the change of the ground floor of the detached garage from storage to living space.
- L.A. Ref. 09/13 – Permission **granted** under appeal ref. 233209 for the change of use of first floor of a garage from storage to bedroom.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Kerry County Development Plan, 2015 – 2021.

Section 13.4 sets out ‘standards for residential development in Rural and Non-Serviced Sites’. This section states that only one dwelling unit shall be connected to a single septic tank.

Section 13.7 provides guidance on ‘family / granny flat extensions’.

6.0 The Appeal

6.1. The following is the summary of a first party appeal submitted by the applicant’s agent;

Refusal Reason no. 1

- The purpose of the subject application is to provide an additional bedroom for visitors or family members. The existing house has insufficient sleeping facilities.
- Rather than build an extension it is more sustainable to use an existing structure.

- The subject application is for the provision of an additional bedroom at ground floor level rather than a living space. The proposed use will accommodate sleeping facility only.
- The change of use to a bedroom will therefore not result in the creation of a separate, independent dwelling unit as occasional users will have to rely on the services in the main dwelling house.
- The lack of services in the garage will ensure that the bedroom will not function as an independent unit and cannot be let or sold separately.
- It is considered that the local authority's first refusal reason is invalid. The subject development will not create an independent living unit.
- The proposed development will have no negative impact on the environment in terms of wastewater treatment.
- The existing septic tank permitted under L.A. Ref. 01/3369 has a design capacity of 8 PE.
- As the proposed bedroom is only for occasional users it will not result in any sustained increase in loading on the septic tank. The existing septic tank is a biofilter sewage treatment system suitable for this type of domestic application.
- The capacity of the septic tank has the capacity to accommodate the proposed development.
- The proposed development is cost-effective for the applicant and will also have a positive impact on the landscape as it avoids the construction of a new build in a designated scenic landscape.
- The proposed development is in accordance with the provisions of the Building Regulations.
- The proposed development is in accordance with development plan policies such as RS-4 (protection of the landscape), RS-6 (permitted development must be used as a primary permanent place of residence) and RS-12 (impact in design terms will be minimal).
- The proposed development will not result in the provision of a granny flat.

Refusal Reason no. 2

- Section 7.3 of the Development Management Guidelines outlines the basic criteria for conditions.
- Condition no. 3 of appeal ref. 233209 does not remove the right of the applicant to seek a change of use application.
- In accordance with Planning Law two principles must occur for there to be a material change of use. Firstly there must be an act of development being the change not the use itself and the change must be material.
- It is acknowledged that a change of use from storage to bedroom is a material change of use that requires a planning application.
- It is submitted that the report by the planning inspector demonstrates that a grant of permission in a subsequent application would supersede any previous permission.
- It is contended that it was on the assumption that a condition restricting the use in a subsequent permission that the Planning Inspector included a requirement for a S.47 agreement in condition no. 3. The Board omitted the S.47 agreement and concluded that condition no. 3 would not preclude future change of uses.
- It is submitted that refusal reason no. 2 in the current case is not essential to implement the Board's previous decision and it is claimed that it is a contravention of the Board's intentions.
- It is submitted that should the development be generally consistent with the proper planning and sustainable development of the area there then is no legal basis for refusal based on the imposition of condition no. 3

6.2. **Observations**

The following is the summary of an observation submitted by the **John Vaughan**.

- The granting of planning permission would nullify the conditions set by An Bord Pleanála in the previous application.
- It is submitted that the change of use is a material change of use.

- The subject development would set a precedent as every boathouse, garage and outhouse could be converted.
- It is submitted that the applicants do not live permanently in the main house. A simple test is that the applicant's children do not attend school locally.
- The main house on the appeal site is accessed from a private road and the applicant has a right of way to access the main house. However the applicant has no consent to use the private road to access a second house.

The following is a summary of an observation submitted by **Michael Sheehan**;

- The observer supports the decision of Kerry County Council.
- The property is a holiday home and not a primary residence.
- The waste water proposals are contrary to the Kerry County Development Plan.
- The existing domestic waste water treatment plant (WWTP) has a design capacity of 8 no. people. Assuming the house is full accommodating 8 no. persons and that proposed garage conversion is full then the WWTP will be overcapacity.
- This will be prejudicial to public health and this would set an undesirable precedent for future development.
- The private road is owned by the observer and the use of this road by a second dwelling would create an undesirable precedent.
- The proposed development comprising of two separate living units on the same site would amount to overdevelopment of the site and set an undesirable precedent for future development in the local area.
- The Board are requested to retain the 4 no. conditions in appeal ref. 233209 and in particular conditions no. 3 and 4.

The following is a summary of an observation submitted by **An Taisce**;

- In a previous planning application, i.e. L.A Ref. 09/13, permission was granted by An Bord Pleanala (appeal ref. 233209) to change the first floor of the existing detached garage to an ancillary bedroom serving the main house.
- This permission by An Bord Pleanala was subject to a condition requiring that the ground floor shall not be converted into a habitable room.
- The existing house on the site is not a permanently occupied house.
- It is submitted that given the remote location of the site it is difficult to monitor planning restrictions or conditions.
- It is contended that should planning permission be granted for a bedroom it would be very easy to convert it into a kitchen or living space.
- Given the location any unauthorised change is likely to go unnoticed.
- The overall size of the site is capable of accommodating two houses.
- The site is large enough to accommodate an extension or granny flat. It is contended that the proposed arrangement of bedrooms located in the detached garage away from living services is unsatisfactory.
- The proposed development would cause overloading of the domestic waste water treatment system.

7.0 **Assessment**

- Principle of Development
- Impacts on Established Amenities
- Landscape Impacts
- Appropriate Assessment

7.1. **Principle of Development**

The proposed development provides for the conversion of a ground floor storage area in a domestic garage to a bedroom area. The garage is two-storey in height and

the first floor is currently in use as a bedroom which is ancillary to the main dwelling house. The main dwelling house is located approximately 25m from the domestic garage.

The applicant obtained planning permission from An Bord Pleanála under appeal ref. 233209 for a change of use of the first floor of the garage from storage to bedroom. Condition no. 3 of this permission stated that the ground floor of the garage shall not be converted into habitable accommodation and shall remain in use as a domestic storage / garage and the garage shall not be extended.

The purpose of this appeal before the Board is to effectively challenge condition no. 3 of appeal Ref. 233209. Therefore I would consider that the local authority's refusal reason no. 2 alone would not be sufficient to refuse the development which is the subject of this appeal. In relation to refusal reason no. 1 I would consider that the intension of the proposed development is not to create an independent living unit but provide an ancillary accomdation for the main dwelling house. Therefore as the proposed development would not provide for an independent living unit then the proposal cannot be inconsistent with Section 13.4 of the Kerry County Development Plan, 2015 – 2021. Therefore I would not support the local authority's first refusal reason.

The County Development Plan sets out provisions in Section 13.7 in which it is possible to extend family dwellings to provide for extending families. This includes family flats and domestic extensions and the proposed development is not consistent with either of these provisions. Overall I would consider that the principle of the subject development would not generally be acceptable having regard to the condition no. 3 of appeal ref. 233209 and failure of the proposed development to comply with Section 13.7 of the Kerry County Development Plan, 2015 - 2021.

7.2. Impacts on Established Amenities

I would note from the submissions on the file that there is a concern that should permission be granted that the garage would become an independent living unit even despite conditions to restrict this. An Taisce, in their submission, raises the point that given the remote location of the appeal site that the changes could occur to the use without anyone noticing and therefore it may be difficult to enforce any conditions. I would consider that this is a reasonable argument as I inspected the internal floor area of the subject detached garage and I noted that the upstairs bedroom included a separate room providing for a kitchette, with sink, microwave and kitchen units but no cooking facilities. This kitchette differs from the submitted first floor plan submitted with the planning application as the area of the existing kitchette is referred to as a landing in the plans.

The other submitted observations which are from local residents are concerned with access given that the road serving the appeal site is a private road and that there is no consent for the use of the road for a second dwelling. Furthermore the observers are concerned with the capacity of the on-site domestic wastewater treatment plant as should the main dwelling house and the proposed garage conversion be at full capacity then there would be overloading issues.

The subject development is unusual in the sense that the development represents additional bedrooms that are detached from the main dwelling house. The applicant's submit that the proposed development is not to provide for an independent living unit. On balance I would consider that the concerns raised by the observers are genuine and I would consider that the entire conversion of a detached garage would set an undesirable precedent for similar development in the local area. Furthermore I would consider that the County Development Plan makes provision for a family / granny flat extension as set out in Section 13.7 of the County Development Plan. The proposed garage conversion which intends to provide extended bedroom space to the main dwelling house for family members or guests is inconsistent with Section 13.7 of the County Development Plan and therefore would not be in accordance with the proper planning and sustainable development of the area.

7.3. **Landscape**

The proposed development is a change of use application and there is no additional development on the site so the proposed development will have no impacts on the local landscape.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of the development proposed, to the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

8.0 **Recommendation**

8.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

9.0 **Reasons and Considerations**

1. Having regard to the pattern of development in the area, it is considered that the proposed development would represent overdevelopment of the site and would be inconsistent with Section 13.7 'Family / Granny Flat Extensions' of the Kerry County Development Plan, 2015 – 2021, which sets out provisions for the extension to family homes. The proposed development would detract from the amenities of adjoining properties, would be out of character with, and fail to respect the established pattern of development in the vicinity, and would set an undesirable precedent for similar type of development in the area. The proposed development would, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would materially contravene condition no. 3 of An Bord Pleanála order appeal ref. 08.233209. Condition no. 3 of this permission requires that the ground floor area of the garage is retained as a storage area and not converted into a habitable space. The proposed development, if permitted, would therefore conflict with the terms of a previous permission and would act as an undesirable precedent for further such development elsewhere in the County, and would therefore be contrary to the proper planning and sustainable development of the area.

Kenneth Moloney
Planning Inspector

28th April 2017