



An
Bord
Pleanála

Inspector's Report PL08.248261

Development	House and associated site works (within curtilage of a protected structure).
Location	Woodlawn, Listowel, Co. Kerry
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/927
Applicant(s)	Annette McElligott
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Kathleen Walsh
Observer(s)	1. An Taisce
Date of Site Inspection	02.06. 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site (stated area of 0.16 ha) is located east of Bridge Road to the south of Listowel town in northern County Kerry. It is located to the south west of Woodlawn housing estate and to the north of a large cash and carry warehouse unit. The site lies within the curtilage of and to the south east of a protected structure 'Gurtenard House'. The site is a greenfield site and 'Gurtenard House' at a higher ground level directly overlooks / front onto the appeal site. It is presently accessed via the grounds of the protected structure.
- 1.2. I note the different spelling of Gurtenard House Protected Structure on the file in particular 'Gurtinard House' as per Appendix A – Record of Protected Structures. For the purpose of this report, however, I intend to refer to the House as 'Gurtenard House' as denoted to by the third party and current owner of the property.
- 1.3. 'Gurtenard House' comprises a three-bay two storey over basement house, built c. 1830, with single-bay two storey recessed entrance bay to the centre approached by a flight of steps and single-bay two storey projecting end bays. Previously in use as a rectory, renovated c. 1950, now in use as a guest house.
- 1.4. The structure was surveyed as part of the National Inventory of Architectural Heritage (NIAH) and was afforded a Regional rating of importance for Architectural, Artistic, Historical and Social categories of Special Interest (NIAH Reference Number 21400202).
- 1.5. The appeal site is bounded by the natural high stone curved wall associated with 'Gertenard House' to its eastern and southern boundary. A low stone capped wall with cast iron gates bounds the site to the north west and separates 'Gurtenard House' from the subject appeal site.
- 1.6. Levels across the site fall from north to south and east.

2.0 Proposed Development

- 2.1. The proposal comprises permission to construct:
 - House and associated site works (within curtilage of a protected structure)
 - New entrance via Woodlawn housing estate cul de sac to the east

GFA of the proposed works is stated as 208 sq. m

The dwelling has a maximum height of 6.588m

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following a request for Additional Information with respect to the impact of the proposed development on the Protected Structure Gurtenard House. Proposed dwelling to be sited at the maximum distance from the boundary with the Protected Structure, revised siting from that of in front of the southern elevation, reduction in the F.F.L and reduction in dominance and scale of the proposed dwelling. Planning permission was granted subject to 14 number conditions. Conditions of note include:

Condition 6. The finished floor level shall be in accordance with the Site Section Drawing received on the 02/02/2017

Condition 7. De-exempts development falling within Class 1 or Class 2 of Schedule 2, Part 1 of the Planning and Development Regulations within the curtilage of the proposed dwelling.

Condition 8. No part of any exempted structure shall be erected to the north side of the proposed dwelling.

Condition 14. Landscaping of the site shall be in accordance with Landscape Plan received on 23/09/2016.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report supports the draft decision to Grant planning permission. It sets out that having regard to the planning history of the site that subject to condition the proposed development would not be visually obtrusive or out of character with the existing pattern of development in the vicinity.

3.2.2. Other Technical Reports

- Roads Department: No objection subject to condition.

- Water Services Department: No objection subject to condition.
- Conservation Officer: Report prior to FI being submitted outlines concerns, recommends request for A.I.

3.3. Prescribed Bodies

- Irish Water: No objection subject to condition.
- An Taisce: Report sets out that An Taisce found it difficult to judge the planning application because Architectural Impact Assessment was not carried out. Siting poles to mark location of the building and a detailed landscape plan are also essential in order to judge the likely impact of a new building on the protected period house.

3.3.1. The file was referred by Kerry County Council to DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, An Comhárle Ealaoin and Fáilte Ireland, no response was forthcoming / on file.

3.3.2. The file was referred by ABP to DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs and The Heritage Council, no response was forthcoming / on file.

3.4. Third Party Observations

An observation was submitted to the planning authority from the owner of 'Gurtenard House'. Concerns raised are similar to the concerns raised in the third party appeal summarised in detail below.

4.0 Planning History

4.1. **Reg. Ref. 13/404009** Permission Granted to construct a dwelling house and associated works on site. Live permission with an expiry date of August 2018

5.0 Policy Context

5.1. Architectural Heritage Protection Guidelines for Planning Authorities (2011)

5.2. Development Plan

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021 and the Listowel Town Development Plan 2009 – 2015.

The site is located in an area zoned 'Town Centre & Mixed Use development' within the curtilage of 'Gurtenard House', a Protected Structure Ref. No. 3, 21400202 as determined by the Listowel Town Development Plan 2009 – 2015.

Relevant Sections / Policies:

14.9 Town Centre Facilities and Mixed Use Development

15.38 Development within the curtilage and setting of Protected Structures.

Chapter 9 Built Heritage and Urban Design

'Protect and enhance Protected Structures, 'Objective BHUD 27: which includes:

'b. Development adjacent to a protected structure shall not detract from the character of the structure or its setting, and existing views to and from the protected structure shall be protected from undue intrusion by new development, including structures, plant and equipment, signs or other devices'.

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised within the third party appeal by Kathleen Walsh have been collated under the following headings:

6.1.1. Impact Upon 'Gurtenard House' Protected Structure

- Application site sits within the curtilage of 'Gurtenard House'
- No Architectural Impact Assessment has been submitted
- Site is sensitive and requires careful consideration for its heritage value and its location in front of a beautiful Georgian House within feet of the Town Square in one of Irelands Heritage Towns.

- Revised design submitted by way of F.I does not resolve issue of impact Upon 'Gurtenard House'
- Overlooking of 'Gurtenard House'
- Scale, height, design, massing and siting of the proposed dwelling is inappropriate and will negatively impact upon 'Gurtenard House'.
- Negative impact in terms of view to and from 'Gurtenard House' and the site from the town.
- Last opportunity to preserve the character of the central core of a historic property.

6.1.2. **Lack of Public Notices**

- The planning authority did not request new public notices following F.I submission
- Lack of new public notices impeded ability to comment on the revised design

6.1.3. **Plans and elevations are not appropriately dimensioned**

- The section as submitted underestimates the visual impact
- Site poles should be placed upon the site to clearly indicate impact

6.1.4. **Design**

- A coach house design could be better integrated into the site
- Parking could be better integrated to the front of the house
- The house neither acknowledges or blends with 'Gurtenard House'
- Design is devoid of character
- The sites setting merits sensitive design
- The planning authority appear to have ignored the Heritage Officers advice
- Revisions made to the design following F.I request are tokenistic

6.1.5. **Impact Upon Heritage Value of Listowel**

- Degrade Listowel's town heritage.
- Reduce the attractiveness of the town

- Negatively impact upon a tourist amenity

6.1.6. **The Appeal is accompanied with:**

- 3rd Party submission to the planning authority.
- Receipt acknowledgement from Kerry County Council.

6.2. **Planning Authority Response**

- Response received in respect to BP10 from ABP, relating to relevant planning history, no further comments forthcoming.

6.3. **First Party Response**

6.3.1. **Curtilage of 'Gurtenard House'**

- Gurtenard House and the original grounds have been sold off and developed over time, however the grounds which remain are generous for a town centre site and adequately protect the integrity of the Listed Building.
- It could be argued that all houses in Woodlawn sit within the original curtilage of Gurtenard House.
- Legally in Ireland curtilage is defined as follows: 'in relation to a dwelling, means an area immediately surrounding or adjacent to the dwelling which is used in conjunction with the dwelling, other than any part of that area that is a public place' (Source: criminal Law (Defence and the Dwelling) Act 2011)
- The curtilage of 'Gurtenard House' is much smaller now.
- The appeal site is not used in conjunction with 'Gurtenard House'.
- The principle of a house on the site was established four years ago under Reg. Ref. 13/404009
- The appeal site was not included in the sale of 'Gurtenard House' when the current owner purchased it in late 2014 / early 2015
- The ridge height and FFL was reduced in response to F.I
- The floor plan was moved as far from 'Gurtenard House' as practically feasibly.

- Condition 8 of the notification of decision to grant planning permission protects the environs of 'Gurtenard House' – de-exempts normally exempt development.

6.3.2. **Location / setting**

- The site is a town centre zoned site
- The site subject to this application has not been listed under any protection order and thus a two storey house located 8.9m from the site boundary of 'Gurtenard House' of height 7.19 m was granted planning permission under Reg Ref. 13/404009
- The proposed dwelling is located 5.440 – 9.786 meters from the boundary with 'Gurtenard House' and is a single storey house of height 6.588 m
- The site levels have been reduced to achieve reduced FFL's
- The proposed dwelling has been designed to maximise southerly natural light and all living areas are facing away from 'Gurtenard House' thus eliminating overlooking.

6.3.3. **Overlooking**

- The dwelling will not overlook 'Gurtenard House'

6.3.4. **Landscaping**

- The proposed landscaping will emphasise the boundary and serve to integrate the proposed dwelling into its setting.
- Visually separate the proposed dwelling site from that of 'Gurtenard House'
- Landscaping has been conditioned by the planning authority and will be carried out within one year of occupation of the house.

6.3.5. **Design**

- Design objectives of the proposed dwelling include: energy efficiency, water conservation, maximisation of solar gain, heat recovery and ventilation
- Reducing the height inhibits reaching all of the expected targets for near passive house construction.

- The north facing approved design on this site is not in keeping with environmentally sustainable design objectives highlighted in policy documents of the Listowel / Kerry planning divisions.

6.3.6. **Response accompanied with:**

- Photographs

6.4. **Observations**

6.4.1. An Observation was submitted from An Taisce it is summarised as follows:

- The proposed house adjoins a very attractive protected structure, Gurtinard House.
- Further information is needed before a decision is made in this case.
- Architectural Impact Assessment needs to be carried out.
- Siting poles to mark the location of the building and a detailed landscaping plan are also essential in order to judge the likely impact of a new building on the protected period house.

7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Development on the Site**
- **Impact Upon 'Gurtenard House' Protected Structure**
- **Visual Impact**
- **Other Matters**
- **Appropriate Assessment**

7.2. **Principle of the Development on the Site**

The appeal site (0.16 ha) is located within an area zoned 'Town Centre & Mixed Use development' within the curtilage of 'Gurtenard House', a Protected Structure, Ref.

No. 3, 21400202 as determined by the Listowel Town Development Plan 2009 – 2015.

There is currently a live permission relating to the subject appeal site. On foot of Reg. Ref. 13/404009 planning permission was granted to construct a two storey dwelling house and associated works on site. This permission is a live permission with an expiry date of August 2018.

The proposed development for one number, single storey, dwelling house, to replace the permitted dwelling (not yet constructed) with entrance and car parking on lands designated for town centre and mixed use development is acceptable in principle, subject to successful integration of the proposal into the landscape, impact upon the curtilage and setting of the protected structure 'Gurtenard House' and compliance with development management criteria set out in the Development Plan.

7.3. Impact Upon 'Gurtenard House' Protected Structure

Concern has been raised by the owner of 'Gurtenard House' with respect to proposed setting, scale, design and finish of façade. It is submitted that the proposed dwelling would overlook and have a negative impact upon the setting and views to and from 'Gurtenard House'.

Regard being had to paragraph 13.1 'Determining the Curtilage of a Protected Structure' set out in the Architectural Heritage Protection Guidelines for Planning Authorities (2011) and to the opinion of the Conservation Officer of the planning authority I agree that the appeal site is within the curtilage and setting of 'Gurtenard House' Protected Structure.

I note that there are no protected views designated on the subject appeal site.

Paragraph 15.38 of the Listowel Town Development Plan 2009 – 2015 sets out the following guidance in relation to development within the curtilage and setting of Protected Structures.

'In considering applications for development within the curtilage of protected structures the Council shall have regard to:

- The various elements of the structure, which gives the protected structure its special character and how these would be impacted upon by the proposed development.

- The proximity of any new development to the main protected structure and any other buildings of heritage value.
- The design of the new development, which should relate to and complement the special character of the protected structure.

High quality design will be a foremost consideration when assessing proposals for development within the curtilage of a protected structure, with particular emphasis siting, building lines, proportions, scale, massing, height, roof treatment and materials. This does not preclude innovative contemporary buildings. Development proposals should include an appraisal of the wider context of the site and structure'.

The greenfield site, is a zoned site, within the established built up urban area of Listowel town. I consider, the fact, an extant live permission pertains to this site has significant bearing on the subject proposal.

Under Reg. Ref. 13/404009 planning permission was granted to construct a two storey dwelling of some 194 sq. m with a ridge height of 7.19m, a FFL of 97.8m, (some 2.2m below the FFL of 'Gurtenard House' 100m OD), with a separation distance of some 16m from 'Gurtenard House' and approx. 10 m from the divisional south eastern boundary wall. The permitted dwelling is orientated east west, with the front of the dwelling facing Woodlawn housing estate (north east) and the side of the dwelling facing 'Gurtenard House' (north west). The one first floor window on this elevation serve an en-suite. It is proposed to be accessed via Woodlawn cul de sac at a point just south of the current proposed access.

I note the concerns raised in the Conservation officers report on file with respect to FFL and separation distance, that the proposed dwelling would be visually prominent and would detract from the prominence of 'Gurtenard House'. This being said the Conservation Officer in the case of Reg. Ref. 13/404009 considered that the setting of the house had already been severely compromised and in the context of the level and style of development which has taken place in the vicinity considered that the proposed development was no better or no worse. It was considered given its

location in close proximity to the town it was to be expected that surrounding developments would eventually encroach upon this idyllic setting. No objection in principle was raised and consequently planning permission was granted for a dwelling as described above, under Reg. Ref. 13/404009.

It is my opinion that the design of the subject appeal proposal is to a higher architectural standard, with a simpler plan and form, which is subordinate to the Protected Structure. The proposed dwelling, as amended by way of additional information, is located some 13.2m from 'Gurtenard House' and between 5.4m and 9.78m from the low stone divisional boundary wall. It is orientated east west with the front entrance from the east. The dwelling proposed is single storey with vaulted ceiling over the living area to its southern elevation, a stated GFA of 202 sq. m, a maximum ridge height of 6.588m and a stated FFL of 24.175, which is 1.9m below the stated FFL of 'Gurtenard House' 26.075.

While the dwelling has a 0.3m higher FFL and is sited 2.8m closer to 'Gurtenard House' than the permitted development, I consider that the design, scale, massing, height (overall 0.3m lower) and form of the building would relate better to and be deferential to 'Gurtenard House'. I note the overall single storey design of the dwelling. Glazing, above ground floor, proposed to provide light to the vaulted ceiling / living area is to the south elevation, only. Ground floor windows, only, oppose 'Gurtenard House' and therefore the issue of overlooking / opposing windows would not arise.

Having conducted a site inspection, in my opinion, it is clear that given the separation distances involved and the site location within the curtilage of 'Gurtenard House' a degree of visual impact would arise to the character of the adjacent Protected Structure. However, the site is zoned town centre and there is presently a live permission for a two storey dwelling 7.1m in height with modern glazed conservatory, dormer windows and projecting bay windows, which, in my opinion

would have a greater visual impact upon the curtilage and setting of the Protected Structure.

Given the change in levels across the site, the FFL as proposed in combination with the design, scale, height and finish of the proposed dwelling I recommend that permission be forthcoming for the proposed development, subject to condition. In this regard I agree with Condition 7 of the notification of decision to grant planning permission (Reg. Ref. 16/927) which de-exempts development falling within Class 1 or Class 3 of Schedule 2, Part1 of the Planning and Development Regulations, 2001 as amended. I recommend that this condition be reattached to any grant of planning permission forthcoming from the Board.

7.4. Visual Impact

I do not agree with the third party appellants view that the proposed dwelling if permitted would reduce the attractiveness of Listowel town and negatively impact upon a tourist amenity. The appeal site, albeit somewhat elevated, is not visible from the town centre and is not readily visible from the Bridge Road / N69 to the south or from Woodlawn Housing estate to the east. The approx. 2m high stone boundary wall, ground levels, mature landscape screening and the presence of the large cash and carry / value centre on the N69 to the south of the appeal site in combination prevent direct views into / of the appeal site.

The materials and external finish of the proposed dwelling are neutral self-coloured render and black roof tiles, which I consider accord with the requirements of the Development Plan. A landscape plan has also been submitted which will aid assimilation of the proposal into the landscape. I recommend that should the Board agree that planning permission be forthcoming in the subject case that conditions be attached to any decision to grant planning permission requiring that materials, colours and the external textures of the dwelling be submitted to and agreed in writing with the planning authority. Also, that the landscaping plan as submitted on the 23rd of September 2016 be carried out within the first planting season following substantial completion of works.

7.5. Other Matters

Concern has been raised with respect to lack of revised public notices, following a request for additional information. It is at the discretion of the planning authority to decide, whether, the additional information is deemed significant and thereby, whether, revised public notices are required. While this matter is, solely, a function of the planning authority and not The Board, I agree with the decision of the planning authority, in this case, that the additional information submitted addressed the concerns raised and do not materially alter the proposal, so as to be deemed 'significant'.

Concern has been raised with respect to clarity of the plans and elevations submitted. Having assessed the plans and drawings submitted I am of the opinion that there is sufficient information on the file for an informed decision to be made.

7.6. Appropriate Assessment (AA)

- 7.6.1. The closest European Sites are Lower River Shannon SAC located some 280 m to the south west of the site. Moanveanlagh Bog SAC located 5.7 Km to the east. River Shannon and River Fergus estuaries SPA 14 Km to the north of the site and Stacks to Mullaghareirks, West Limerick Hills and Mount Eagle SPA 7.6Km to the south east of the site.
- 7.6.2. The planning report on file concludes that appropriate assessment is not required.
- 7.6.3. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development, urban serviced location and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1.1. I recommend that planning permission should be Granted subject to the following conditions.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the land-use zoning of the site, the existing pattern of development in the area, to the planning history of the site, it is considered, that, subject to compliance with the conditions set out below, the proposed development would not be injurious to visual amenity of the area or injure residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 2nd February 2017, 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. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The Finished Floor Level (FFL) shall be in accordance with the site section drawing (Section X-X) submitted to the planning authority on the 2nd February 2017.

Reason: In the interest of visual amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, 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.

5. The windows serving all bathrooms, en-suites and walk-in wardrobes shall be permanently fitted and maintained with obscure or stained glass. The use of film is not permitted.

Reason: In the interests of proper planning and sustainable development of the area

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: In the interest of public health.

7. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

8. (a) The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interests of public safety and residential amenity

9. Vehicular access shall be located as shown on the Site Layout Plan submitted to the planning authority on the 2nd February 2017 and shall be recessed from the entrance of the existing front boundary fence.

Reason: In the interest of traffic safety.

10. The landscaping scheme as submitted to the planning authority on the 23rd day of September, 2016 shall be carried out within the first planting season following substantial completion of external construction works.

- All existing boundary screening shall be retained in full
- Only Native Evergreens (Holly, Yew, Scots Pine) Native Deciduous (Oak, Elm, Ash, Birch, Hazel, Alder, Willow, Whitethorn, Blackthorn, Irish Whitebeam, Rowan) shall be planted.
- Exotic species such as Cypress, Escallonia, Griselinia, Leylandii, Rhododendron and Laurel shall not be planted.

All planting shall be adequately protected from damage until established. 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 the interest of residential and visual amenity.

11. 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. 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 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.

Fiona Fair
Planning Inspector
30/06/2017