



An
Bord
Pleanála

Inspector's Report PL 08.249277

Development	Retention of dwelling-house as erected on site and retention of an extension to domestic garage/outhouse.
Location	Gortagurrane West townland, Ballyconry, Lisselton, Listowel, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/377
Applicant(s)	Noel O'Hara
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	Noel O'Hara
Observer(s)	None
Date of Site Inspection	4 th December 2017
Inspector	Michael Dillon

1.0 Site Location and Description

1.1. The site, with a stated area of 0.54ha, is located on the east side of the R551 Regional Road linking Ballybunion to the north with Ballyduff to the south, in Co. Kerry. The site is some 5km southeast of Ballybunion. The 80kph speed restriction applies on this road. There is no public lighting and there are no public footpaths. There is an existing bungalow on site, with low-pitched roof, set back approximately 45m from the edge of the carriageway. There is an extensive array of sheds to the rear of the house – some being used as an artist's studio. There is parking for a large number of cars, both to the front and to the rear of the house. The roadside boundary has been set back for the full length of the frontage. The vehicular entrance is recessed: sight distance is good in either direction. The site is flat, and the house is served by a septic tank – located within the front garden area. There are some rushes growing within this garden area. There is a golf antiques shop located within the house block (at the southern end): it was not open on the date of site inspection. The site is surrounded on three sides by agricultural land. There is sporadic housing to the southwest of the site.

2.0 Proposed Development

- 2.1. Permission sought on 26th April 2017, for retention of a dwelling-house (164sq.m), as constructed, on the site. This house incorporates a small artist's studio in an area constructed as an integral garage. Water supply is stated to be from the public mains. Waste water is stated to be discharged to a conventional septic tank system with percolation area.
- 2.2. Following a request for additional information, in relation to unauthorised signage on the road; use of the 'artist's studio and utility room of the house as a golf antiques shop; and unauthorised garage extension to the rear; revised proposals were received on 31st July 2017 as follows-
- Retention permission now sought for a single-storey domestic garage/out-house of approximately 22sq.m to rear of house.

- The artist's studio was turned into an antique golf shop following the death of the applicant's wife (who had been an artist). The applicant was not aware that planning permission was required for the change of use. The golf shop closed two years ago due to the ill health of the applicant, and it is not proposed to re-open it.
- All advertising signage on the roadside has been removed. Signage was kept in place to prevent trucks and vans parking on the side of the road – making exiting the site difficult for the applicant, whilst driving.
- Revised public notices.

3.0 Planning Authority Decision

By Order dated 25th August 2017, Kerry County Council issued a Notification of decision to grant planning permission subject to 6 no. conditions.

Condition 2 requires removal of canopy over the front elevation of the 'artist's studio' at the front of the house.

Condition 3 required that the 'artist's studio' room shall be used as private domestic use only.

Condition 4 required that the dwelling-house and garage/outbuildings shall remain as one integral unit.

Condition 5 required that the garage/outbuildings on site be used for domestic storage purposes only and not for any commercial, habitation or agricultural uses.

4.0 Planning History

Ref. 46/82: Permission granted on 18th February 1982, to William Noel O'Hara to erect a bungalow on this site. Condition no. 2 required that only one dwelling-house be erected on the site.

Ref. 474/85: Permission granted on 30th May 1985 to Noel O'Hara, to retain change of use from private garage to artist's studio. Condition no. 2 required that parking facilities for four vehicles be provided on the site.

Ref. 108/98: Permission granted on 24th March 1998, to Noel O'Hara for retention of domestic garage to rear of bungalow and change of use of adjoining shed to artist's studio (72.sq.m).

5.0 Policy Context

5.1. Development Plan

The relevant document is the Kerry County Development Plan 2015-2021. Section 3.3 contains policies in relation to rural development. The site is located in an area zoned 'Rural General'. These areas constitute the least visually sensitive areas of the county.

5.2. Natural Heritage Designations

The Lower River Shannon SAC (Site code 002165) is located some 0.5km to the west of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from Noel Lynch Planning & Design, agent on behalf of Noel O'Hara, received by the Board on 20th September 2017, is against conditions only, and can be summarised in bullet point format as follows-

- The applicant received permission in 1982 to build his house. He built a domestic garage attached to the house – on the right hand side of the house, even though permission was granted to have the garage erected on the left hand side.
- In 1985, the applicant was granted permission to convert part of the garage to an artist's studio (ref. 85/474). The plans showed the garage on the right hand side of the house.

- In 1998, the applicant was granted permission for a gallery and framehouse (ref. 98/108). The plans submitted also showed the garage on the right hand side of the house.
- Conditions 3 & 5, granted with permission ref. 17/377, now appear to rescind the two permissions which were already granted. The applicant wishes to retain these two permissions as they make the property more valuable, and he wants to have the option to continue these businesses in the future.
- The reason for the 2017 application, was to get the planning status of the site in order.

6.2. **Planning Authority Response**

There is no response from Kerry County Council to the grounds of appeal submitted.

6.3. **Observations**

The Board referred the appeal to the Development Applications Unit of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs for comment on or before 28th November 2017. No response was received.

7.0 **Assessment**

7.1. **General Comment**

The house, erected on this site on foot of planning permission ref. 46/82, was essentially a mirrored version of that which was indicated on drawings submitted. The position of the house on site is somewhat different to that shown on original permission drawings. The location of the septic tank on the site is not that shown on drawings. Drawings show it located in the rear garden, whereas it has been constructed in the front garden. The current application for retention of the dwelling-house does not specifically refer to retention of the septic tank and percolation area serving the house. However, I would consider that it could be taken that the proposed development for retention is the entire dwelling-house site – including the house, vehicular access and domestic waste disposal arrangements. Original plans

submitted show a well-water supply (in the location where the septic tank and percolation area are now located). The documents submitted with the current application, indicate that the house is now served by a mains water supply.

7.2. Planning History & Uses on Site

- 7.2.1. Permission was granted, ref. 474/85, for conversion of the garage on this site to 'Artist's Studio'. It is clear from drawings that the house drawings had been mirrored, but this was not commented upon. Nor was the house constructed on the footprint for which permission had originally been granted – ref. 46/82. The applicant states that his wife was the artist, and that she has since died. I note that the photographs submitted with the Planner's Report indicate that the utility room to the rear of the 'artist's studio' has been incorporated into it, and both transformed into a Golf Antiques shop. This was verified on the date of site inspection by this Inspector. The applicant stated that this shop closed two years ago, owing to ill health of the applicant. Rather surprisingly, signage on the public road advertising the shop was still in place at the time of the site inspections carried out by the PA for this current planning application. The canopy sign, above the entrance to the Artist's Studio – advertising 'Golf Antiques' – referred to in the Planner's Report from KCC, has since been removed. The shop is still in place, even though it was not open on the date of site inspection by this Inspector. Having regard to the fact that retention is now being sought for the house (as constructed), the question arises as to the validity of permission ref. 474/85 – being a change of use within a structure, which it now appears was unauthorised – being both mirrored during construction and erected on a different footprint to that originally indicated. It could, therefore, be argued that permission ref. 474/85 was void.
- 7.2.2. Permission was granted, ref. 108/98, for retention of domestic garage, and to have existing shed converted to an art gallery and frame house. This gallery had entrance doors located to the side of the house. The floor area of the gallery and framehouse was approximately 72sq.m. The space is/was used as an art gallery and framehouse at present/in the recent past. The entrance remains from an area to the side of the dwelling-house.

7.3. Design & Layout

I would see no difficulty with the mirrored version of the house, as constructed, and nor would I see any difficulty with the revised location of the house on the site. Retention permission has been sought for a garage (22sq.m) to the rear of the house. I would see no difficulty with this retention, provided it is used for purposes ancillary to the enjoyment of the dwelling-house. With regard to the septic tank, it has, presumably, been in this location for some considerable time, and serving the house since it was constructed. It would not be reasonable to seek a Site Characterisation Report for a retention development of this nature, as the principle of residential development served by a septic tank had already been established in 1985.

7.4. First Party Appeal

- 7.4.1. This is a 1st Party appeal against the imposition of conditions 3 & 5. Condition no. 3 requires that the artist's studio room be used for private/domestic use only. I have elsewhere in this report noted that the 'artist's studio' (former domestic garage) was extended without planning permission to incorporate a former utility room. This situation has not been altered. The extended space was used as a 'Golf Antiques' shop, and is still laid out as such. The applicant wishes to retain the 'artist studio' use, in order to increase the value of the property. There was no condition on the original permission limiting its use – the only condition of relevance relating to vehicle parking. The incorporation of the utility room into the 'Artist's Studio' space was done without the benefit of planning permission, and condition no. 3 should be amended to reflect the use of the area – identified on former plans as the 'utility room'.
- 7.4.2. Condition 5 refers specifically to the garage/outbuildings to the rear, requiring them to be used for domestic purposes only. Permission was previously granted for the change of use from domestic shed to art gallery/framehouse (approximately 72sq.m). There was no condition attached to this permission restricting the use. The applicant has sought to have this condition removed, as he wishes to retain the increased value, which this permission confers on the overall property. This would seem entirely reasonable, notwithstanding that the artist for whom the gallery was

built/commissioned is no longer living. I would be satisfied that condition no. 5 should be removed. However, as the gallery/framehouse is located within the curtilage of a dwelling-house in a rural area, and was constructed/permited to facilitate an occupant of the dwelling-house, then it is entirely reasonable to restrict the sale/disposal of the various parts of the development on this site, as specified in condition 4 of the Notification of decision to grant planning permission. This condition states- "The dwelling house and garage/outbuildings on site shall remain as one integral unit under one ownership and no section thereof shall be disposed of as a separate entity". I note that the applicant has not appealed condition no. 4, and it should be retained in any grant of planning permission issuing from the Board.

7.4.3. I would be satisfied that, in line with the provisions of section 139(1)(c) of the Planning and Development Act, 2000 (as amended), that the Board should restrict itself to consideration of the two conditions under appeal – viz no.s 3 & 5, and that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted.

7.5. **Other Issues**

7.5.1. Archaeology

The application was referred to the County Archaeologist. There was no objection to the proposed retention.

7.5.2. Financial Contribution

This is an application for retention of floor area, as constructed. No financial contribution was applied by KCC, and none should be applied by the Board, in the event that the grant of permission is confirmed.

7.5.3. Signage

Condition 2 of the Notification of decision to grant planning permission required the removal of all roadside and canopy signage from the site. This is entirely reasonable, given the nature of the permission sought and the principal use of the site for residential purposes.

7.5.4. Appropriate Assessment

The Board referred the application to the Development Applications Unit of the DoAHRR&G for comment: none was received within the appropriate period. This application is for retention of a permitted house and associated uses. The development has been in existence for a considerable length of time – long before European sites in the area were identified. The house on site is served by a septic tank and percolation area. There are no watercourses either within or immediately adjoining the site, which might act as conduits/connections to any European sites. The closest European site is the Lower River Shannon SAC (Site code 002165) – part of which comprises the Cashen River Estuary, some 0.5km to the west of the site.

8.0 Recommendation

I recommend that conditions 3 & 5 be reworded, for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 Reasons and Considerations

Having regard to the nature of the proposed development, the planning history of the house and outbuildings on this site, the pattern of development in the area, and the nature of the two conditions appealed, it is considered that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, and that conditions 3 & 5 should be reworded, as follows.

10.0 Conditions

3. The unauthorised golf antiques shop use on this site shall be discontinued; or, if already discontinued, shall not be recommenced. The Artist's Studio use within the former garage of the dwelling-house shall, if required by the occupant of the dwelling-house, be reinstated. The utility room use, which was incorporated into the Golf Antiques shop, without the benefit of planning permission, shall be returned to private residential use as part of the dwelling-house, and shall not be incorporated into any reinstated Artist's Studio use within the former garage area. The Artist's Studio and

the dwelling-house, of which it forms part, shall be jointly occupied/used.

Reason: To clarify the extent of this permission, in the interest of orderly development and the residential amenities of the area.

5. The gallery and framehouse use, as provided for under permission ref. 108/98, shall be retained, if required, by the occupant of the dwelling-house, for joint use/occupation. If this space is not required by the occupant of the dwelling-house, then its use shall revert to storage/shed, for purposes ancillary to the enjoyment of the dwelling-house.

Reason: To clarify the extent of the permission, in the interest of orderly development and the residential amenities of the area.

**Michael Dillon,
Planning Inspectorate**

19th December 2017