



An
Bord
Pleanála

Inspector's Report ABP-300155-17

Development	Retain attic conversion and to retain elevational changes to existing dwelling house.
Location	Doon West, Ballybunnion, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/825.
Applicant(s)	Tommy Homes.
Type of Application	Retention Permission
Planning Authority Decision	Refuse Retention.
Type of Appeal	First Party
Appellant(s)	Tommy Homes
Observer(s)	John and Sharon Walsh.
Date of Site Inspection	7 th May 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site is located within a small restricted courtyard style development, west off the main Doon Road (R551) on the northern approach into Ballybunnion town centre. The town of Ballybunnion is located on the coast to the north west of County Kerry.
- 1.2. The site is accessed via a narrow, cul de sac right of way access, between two bungalows both with hipped roofs.
- 1.3. The dwelling the subject of this application has a stated GFA of 60 sq. m is single storey with a hipped roof profile. It is constructed right up to and along the south western party boundary and faces north east into a courtyard to the rear of the two adjoining dwellings to the east, which face onto Doon Road.
- 1.4. There is a further dwelling (with a wooden veranda) located to the west of the subject appeal site, again constructed right up to and along the party boundary to the west. A large store is also located to the north east of the courtyard, to the rear of the dwelling facing Doon Road. The subject dwelling appeared vacant at the time of my site visit, it is accessed via the front yard area of the subject appeal site.
- 1.5. The site encompasses the dwelling the subject of retention permission, a front yard (car parking space) and a side yard area. There is no amenity area associated with the subject site.
- 1.6. The surrounding area is comprised of detached residential dwellings on tight plots.

2.0 Proposed Development

- 2.1. The proposal comprises:
 - Retention of attic conversion (40.5 sq. m) incorporating two number bedrooms, one with en-suite and
 - Retention of elevational changes to existing dwelling house.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reasons:

1. The proposed development would contravene materially conditions 1 & 3 attached to planning Reg. No. 08/2224 an existing permission for development on this site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would constitute over-development of this restricted site and would result in substandard residential development which would seriously injure the residential amenities of the occupants of the proposed dwelling and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report states that both developments for which retention permission is being sought are in complete contravention of a previous grant of permission which allowed the construction of a hipped roof of 5.4m onto a flat roof chalet with the use of this attic space for storage purposes only. The proposal if permitted would contravene conditions attached to an existing permission and would result in over development of the site which would impact negatively on residential amenities in the area.

3.2.2. Other Technical Reports:

None.

3.3. Prescribed Bodies

None.

3.4. **Third Party Observations**

An objection was received from John and Sharon Walsh the observers in the subject appeal case. Issues raised are similar to that raised in the observation submitted, which is summarised in detail below.

4.0 **Planning History**

4.1. **Reg. Ref. 08/2224**

Permission sought to put an A roof with velux windows to the rear and to convert attic for storage to existing dwelling.

Condition 1 state of the grant of permission states:

Within two weeks of the receipt of this decision revised drawings shall be submitted showing the following:

- i) The roof shall be hipped.
- ii) The roof shall be pitched at 35 degrees
- iii) The dwelling shall be a maximum height of 5.4 meters

Condition 2. No part of the proposed extension shall encroach or overhang the adjacent site boundaries.

Condition 3. Attic space will be used for storage purposes only and not for living accommodation.

4.2. **Reg. Ref. 07/3406**

Permission Refused to erect an A – roof with velux roof lights to the rear and a window to the side with living accommodation in roof space of house.

Refusal reasons summarised as follows:

1. Proposal would visually dominate and detract from the aspect of the existing low lying roof structures.
2. The proposed development would effect the elevational appearance and be out of keeping when taken in conjunction with existing developments on this site. Injurious to visual amenity of the area.

- 4.3. **PL08 .221766 / Reg. Ref. 06/3450** Permission Refused by An Bord Pleanala for retention of existing dwelling house within revised boundaries, put a roof on dwelling house and have it converted to include bedrooms and bathroom with velux windows on same.

Reason for refusal stated:

‘ ...restricted nature of this backland site and to the poor quality of private open space proposed, it is considered that the proposed development would constitute over development of this restricted site, would result in overlooking and overshadowing of adjacent properties, would be visually incongruous and would seriously injure the amenities of the area and of property in the vicinity...’

- 4.4. **Note:** In deciding not to accept the Inspectors recommendation to grant permission the Board considered that the proposed development would exacerbate the existing unsatisfactory overall physical development in this backland location.

The Board also had concerns as to the status in planning of the existing house but this matter was not pursued having regard to the refusal reason.

5.0 Policy Context

5.1.1. Development Plan

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021. The site is located within the town boundary for Ballybunnion as determined by the Listowel / Ballybunion Functional Area Local Area Plan 2013 – 2019. The appeal site has no specific zoning.

5.2. Natural Heritage Designations

The appeal site is located approx. 78m from the Lower River Shannon SAC, Special Area of Conservation (SAC)

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised are summarised as follows:

- The original floor plans submitted to ABP under Reg. Ref. 08/224 were for a four bedroom dwelling.
- There are no additional bedrooms to be provided. The current drawings still show a 4 bedroom dwelling.
- The original planning reg. no. 08/2224 allowed for the following items:
 - Hipped Roof
 - 35 Degree Pitch
 - 5.4m Ridge Height
- What has been constructed on site is as follows:
 - Hipped Roof
 - 40 Degree Pitch
 - 6.1m Ridge Height
- The velux windows are in keeping with the original planning reg. no. 08/2224.
- The current hipped roof has greatly improved the aesthetics of the dwelling.
- There is little or no shadowing of the adjoining dwellings.
- The overall bulk, scale and design of the dwelling is in keeping with the surrounding area.
- There is a mix of bungalows, two storeys and dormers dwelling in the area.
- In relation to the objection on file on planning reg. no. 17/825, the ground floor bathroom window was on the original drawings under planning reg. no. 08/2224 on both the existing and proposed drawings. The window has been in place for years.
- The site coverage of the overall site will not be affected or increased.

- Adequate area of private open space exists within the site area. Additional private open space can be achieved by demolishing the outbuilding to the south west of the dwelling and planning boundaries could be extended to incorporate this area if necessary.
- The access has limited visibility but is of acceptable width and already serves the dwellings in the cul de sac.
- Sufficient parking is already provided.
- None of the neighbours have any issues with the privacy of the area and therefore the roof does not injure the residential amenities.
- The proposed existing roof has significantly improved the appearance of the existing building, does not over intensify the site and has caused no significant harm to residential amenity.

6.2. Planning Authority Response

No response received

6.3. Observation

The issues raised in the Observation are summarised as follows:

- The subject appeal property is adjoined to the observer's property.
- The first party put a window in the party wall in 2014. Which they claim they got planning permission for.
- This window is in the sitting room of the observer's house.
- The observers house has not been lived in for quite some time and the roof is ready to fall in. They have not had the money to do repair work needed. They have put the house up for sale.
- The window was only discovered when viewings were taking place.
- Have tried to resolve this matter with the owners but they were not willing to address the issue.

- Kerry Co Council said they could not do anything. As the window is part of the original plans a few years ago which they are saying existed all the time but it did not.

7.0 **Assessment**

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

- **Planning History of the Site**
- **Impact Upon Adjoining Dwelling**
- **Impact Upon the Amenity of The Area**
- **Appropriate Assessment**

7.1. **Planning History of The Site**

- 7.1.1. The proposal is for the retention of an attic conversion that has taken place to a dwelling house and the retention of elevational changes. As is evident from section 4.0 above there is a protracted planning history pertaining to the site which dates back to 2006.
- 7.1.2. On the 30/07/2007 on foot of PL08 .221766 / Reg. Ref. 06/3450 An Bord Pleanala refused permission for retention of existing dwelling house within revised boundaries, put a roof on dwelling house and have it converted to include bedrooms and bathroom with velux windows on same. The reason for refusal considered that the proposed development would constitute over development of this restricted site, would result in overlooking and overshadowing of adjacent properties, would be visually incongruous and would seriously injure the amenities of the area and of property in the vicinity. It is pertinent to note that in deciding not to accept the Inspectors recommendation to grant permission the Board considered that the proposed development would exacerbate the existing unsatisfactory overall physical development in this backland location.

- 7.1.3. The Board also had concerns as to the status in planning of the existing house but this matter was not pursued having regard to the refusal reason.
- 7.1.4. Following on from this decision permission was subsequently sought and refused by Kerry County Council on foot of Reg. Ref. 07/3406 to erect an A – roof with velux roof lights to the rear and a window to the side with living accommodation in roof space of house. The refusal reasons considered that the proposal would visually dominate and detract from the aspect of the existing low lying roof structures and would be injurious to visual amenity of the area.
- 7.1.5. Subsequently on foot of Reg. Ref. 08/2224 permission was sought to put an A roof with velux windows to the rear and to convert attic for storage to existing dwelling. The ridge height was 6.1m with 40 degree pitch. Permission was granted subject to conditions.

Condition 1 of the grant of permission states:

‘Within two weeks of the receipt of this decision revised drawings shall be submitted showing the following:

- iv) The roof shall be hipped.
- v) The roof shall be pitched at 35 degrees
- vi) The dwelling shall be a maximum height of 5.4 meters’

Condition 2. ‘No part of the proposed extension shall encroach or overhang the adjacent site boundaries’.

Condition 3. ‘Attic space will be used for storage purposes only and not for living accommodation’.

- 7.1.6. What has been constructed on site is as follows:

- Hipped Roof
- 40 Degree Pitch
- 6.1m Ridge Height
- It is now proposed to retain the attic conversion from storage to two number bedrooms and a bathroom.

- 7.1.7. The dwelling as constructed is unsymmetrical of 6.1m high and the attic space is in use as two bedrooms and a bathroom. This is clearly in contravention of Condition 1 and Condition 3 of Reg. Ref. 08/2224.
- 7.1.8. It is the opinion of the planning authority that having regard to the planning history of the site and the previous refusal by Kerry County Council and the refusal by ABP that the development 'is a blatant disregard for the planning process'.
- 7.1.9. Having carried out a site visit I agree that the proposal constitutes over development of a severely restricted site, would result in substandard development and would set an undesirable precedent for similar development.
- 7.1.10. The planning history associated with the development poses questions in regard to the first party's approach to the planning process. I recommend that given the planning history associated with the site that permission be refused.

7.2. Impact Upon Adjoining Dwelling

- 7.2.1. An observer to the appeal submits that the subject appeal property is adjoined to their property. It is contended that the first party put a bathroom window in the party wall in 2014. This window is in the sitting room of the observer's house. It is submitted that the observers house has not been lived in for quite some time and the roof is ready to fall in. They have not had the money to do repair work needed. They have put the house up for sale. The window was only discovered when viewings were taking place. The observers have tried to resolve this matter with the owners but they were not willing to address the issue. Photographs of the window and the observer's dwelling have been submitted with the observation.
- 7.2.2. From the plans and drawings pertaining to Reg. Ref. 08/2224 it would appear that the bathroom window was included in the drawings. Regard is had that the window may have been in existence for some time prior to that permission and it was not specifically referred to in the description of the development. From my site inspection and photographic evidence on file it is clear that the observers dwelling is in a state of disrepair with the roof falling in and open to the elements. The flat roofed structure, to the rear of the observer's house, would appear to be an extension. In agreement with the Board in their deliberations in the case of PL08 .221766 / Reg. Ref. 06/3450 as to the status in planning of the existing house (subject of the appeal)

I would consider this also relevant in the case of the adjoining dwelling (the observers property). Party boundary issues are civil matters and not a matter for consideration by An Bord Pleanala. Enforcement issues comes within the sole remit of the planning authority and also not a matter for An Bord Pleanala.

- 7.2.3. From information on the file it does appear that the bathroom window on the party boundary was shown on the drawings pertaining to Reg. Ref. 08/2224. This being said I note Condition 2. of said permission which states: 'No part of the proposed extension shall encroach or overhang the adjacent site boundaries'. In this regard I would also note that Section 34 (13) of the Planning and Development Act, 2000, as amended, states that a person shall not be entitled solely by reason of a grant of planning permission to carry out development on land where they have no sufficient legal interest.

7.3. Impact Upon the Amenity of The Area

- 7.3.1. The subject application is one for retention of use of the attic conversion and to retain elevational changes, namely a 6.1m ridge height with 40 degree pitch rather than a 5.4m high ridge with 35 degree pitch. Given the planning history of the site the applicant should have been aware of the sites constraints. In particular, I highlight PL08 .221766 / Reg. Ref. 06/3450. The design, scale and mass of the dwelling to be retained is very similar to the structure refused permission by the Board in 2007.
- 7.3.2. It was considered by the Board in the 2007 decision that the development proposed would have a negative impact upon the amenity of the area. There has been no material change in circumstances since the decision by An Bord Pleanala under PL08 .221766 / Reg. Ref. 06/3450. The height of the dwelling, proposed to be retained, would diminish the amenity of the area and interfere with the character of the area. The site is backland, constrained with no private open space. An additional two number bedrooms (total four in the dwelling) would exacerbate the existing unsatisfactory overall physical development in this backland location on this severely restricted site. Overall, I consider that permission be refused for the changes to the existing dwelling house.

7.4. Appropriate Assessment

- 7.4.1. 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 the Lower River Shannon SAC (site code 002165) having regard to the nature and scale of the proposed development, infrastructure services in place, lack of hydrological connectivity 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. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the restricted and backland natures of the site and the established pattern of development in the surrounding neighbourhood, it is considered that the development proposed to be retained by reason of its scale, form and design would constitute overdevelopment of a limited site area, would result in inadequate open space and would be visually obtrusive on the streetscape and out of character with development in the vicinity. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development would contravene materially conditions attached to an existing permission for development on this site, namely, conditions 1 & 3 attached to the permission granted by Kerry County Council on the day of 19th November 2008 under planning register reference No. 08/2224. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Fiona Fair

Planning Inspector

16.05.2018