



An  
Bord  
Pleanála

## Inspector's Report ABP.301290-18

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<b>Development</b>	Construct an extension to the rear of a dwelling house for domestic/family use
<b>Location</b>	Brackloon, Main Street, Anascaul, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/968
<b>Applicant(s)</b>	Noel and Moira Spillane
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	James and Peggy Knightly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21 <sup>st</sup> July 2018
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located in the centre of Anascaul village on the southern side of the main street. It is one of a row of similar properties fronting the road with long narrow rear gardens. The plots are generally set back 6-8 metres from the back edge of the pavement and contain mainly detached or semi-detached houses with little space separating the houses. The third party appellant's property lies immediately to the east. This is also a 2-storey detached house, 'The Pines',
- 1.2.** The site accommodates a two-storey detached house which is in use as a Bed and Breakfast. There is also a large detached structure in the rear garden. It is clear from the planning history on site that this building has been used in the past as a separate dwelling, without the benefit of planning permission, but the building now appears to be used as a garage or outbuilding. However, there was nobody at home when I visited. Although access was available from the side, I was unable to gain access to the building itself to confirm the use. The building has been recorded in the past as having windows etc. and this is also clear from the current version of Google Street View (dated 2018). However, the windows have been replaced with garage doors, and/or blocked up. According to previous plans of the site, there was also a garden shed in the centre of the lawn between the two buildings, which the planning history referred to as a 'laundry shed'. This was no longer present at the time of my inspection.

## **2.0 Proposed Development**

- 2.1.** Permission is being sought for the erection of an extension to the main dwelling at the rear. The original submission to the P.A. proposed a 2-storey extension, described as a single-storey with attic, with a floor area of 121sq.m.
- 2.2.** A revised plan was submitted to the P.A. on 10/01/18 showing the proposed extension with a reduced floor area and height. It is now proposed to construct a single-storey flat roof extension with a floor area of 78sq.m. the revised drawings included a shadow analysis and information relating to the use of the outbuilding in the rear garden.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission for the revised proposal subject to six conditions: these were generally of a standard nature apart from Condition Nos. 5 and 6

- **Condition 5** – Part (a) prohibited use of the extension as a commercial guesthouse and limited its use to a private residential extension ancillary to the main dwelling. Part (b) required that the dwelling house, shed to rear garden space and proposed extension to remain as one integral unit under one ownership and that no section be disposed of as a separate entity.
- **Condition 6** – required that the shed shall be used for domestic storage purposes only and not for any habitation, commercial or agricultural uses.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

It was noted that there has been a long planning history on the site, which included refusal of permission for a 2-storey rear extension, refusal of permission for a second dwelling unit in the rear garden and the grant of permission for a domestic garage. However, the garage was subsequently converted into living accommodation without permission and it was noted that this unit is now vacant. Following the initial site visit by the Area Planner in respect of the current application, concern was expressed regarding the precise nature of the use of the said garage at present, notwithstanding the fact that the doors and windows had been blocked up. Clarification was therefore sought from the applicant. The following comments were also made:-

- Permission was refused under 16/579 for the retention of the use of the garage as a dwelling unit and for the construction of an extension linking the said garage to the main house for 2 reasons, based on residential amenity and design.

- On a recent site inspection, the building to the rear did not appear to be in full time residential use. The first floor windows had been blocked up and the patio doors boarded up. A TV was noted inside but also general storage items associated with a garage.
- The applicants had previously applied for three dwelling units on the site, but this was withdrawn prior to determination. Permission was granted for a house to the south of the site on land which was previously part of the rear garden. However, permission was refused on appeal by the Board for a second house in the rear garden. Following this, the applicants applied for permission for the garage but a dwelling house was built in its place with a similar footprint and elevations.
- Concern was expressed regarding the potential loss of amenity due to overshadowing.

It was concluded that further information was required in respect of the shadow impact of the one and a half storey extension and clarification of the proposed use of the proposed extension and the ongoing use of the garage.

### **3.2.2. Other Technical Reports**

**Roads** -no observations to make.

### **3.2.3. Further Information**

The P.A. issued a **FI Request on 22/11/17**. This required the submission of a Shadow Impact Assessment and clarification of the proposed use of both the proposed extension and the existing garage on the site. However, prior to this FIR, the applicants submitted a letter to the P.A. advising that the proposed extension is essential for the family due to the fact that their son has been diagnosed with Autism Spectrum Disorder and confirmed that they no longer live in the shed at the rear of the house.

The information submitted on 10<sup>th</sup> January consisted of a letter from the applicants' agent incorporating photographs of the site together with a revised drawing showing a single storey flat roofed extension in place of the initial design. A Shadow Impact Assessment was also included. It was also confirmed that the garage was no longer used as a living unit and has been converted back to a domestic storage shed.

The P.A. considered that the information was significant and required republication of notices. Confirmation of the revised site and newspaper notices was submitted on 8<sup>th</sup> February 2018. A further response was received from TII which stated that the authority's position remained the same. A further submission was also received from the appellants' agent, on 7<sup>th</sup> February 2018 and a further submission from the appellants was made on 20<sup>th</sup> February 2018. The contents of these submissions which will be summarised below under Third Party Observations.

Additional information was submitted on the 16<sup>th</sup> February 2018. This was in the form of a letter from the applicants which clarified the intended use of the various buildings. It was confirmed that

- The proposed extension is for their own private family use.
- The family moved out of the garage building on 1<sup>st</sup> July 2017, no longer live there and do not intend returning there to live in the future.
- The building has been returned to its original use. The remaining cupboards are being used for storage for reasons of cost and efficiency, which can be inspected at any time.

On receipt of this further information and the further submissions for the parties, the Area Planner considered that the revised proposal would better integrate with the main dwelling and should not impact negatively on the amenities of the of the area. It was considered that the shadow impact of the revised proposal would be negligible. It was noted that the applicants had confirmed that the intended use of the garage is as originally submitted and that the proposed extension would be for private use only. It was therefore concluded that permission should be granted.

### **3.3. Prescribed Bodies**

Irish Water – No objection.

TII – no observations to make.

### **3.4. Third Party Observations**

Objection received from third party appellant of The Pines, immediately to the east. Two submissions were made by the appellants' agent, TB Kennedy (25/10/17 and

07/02/18) and two submissions were made directly by the appellants, Mr. & Mrs. Knightly (23/10/17 and 20/02/18). The observers objected to the proposed development on the grounds of overdevelopment of the site, loss of light, loss of privacy, intensity of use of a commercial premises and lack of adequate off-street parking. Concern was also expressed about the applicant's past history of failure to comply with the planning code and suspicions are raised regarding the proposed true intentions of the applicant, such as an intent to link the proposed extension with the garage and to turn the garage back into a dwelling unit. It is also considered that the proposed extension is too large to constitute accommodation for the family and that it is more likely that it would be used as an extension of the guest house.

The response to the revised submission of the 10<sup>th</sup> January 2018 expressed concern regarding the scale and design of the proposed single-storey extension, and in particular, the proposed patio doors to each of the proposed bedrooms leading onto the garden. It was pointed out that this seemed to indicate a likelihood that these would be used as B & B rooms.

#### **4.0 Planning History**

**04/2976 (PL08.211483)** – permission refused by Board following TP appeal for erection of a dwelling house in rear garden. Reason for refusal was based on undesirable and haphazard backland development on a restricted site which would set an undesirable precedent for similar development and militate against the development of a comprehensive scheme for these lands and would be detrimental to the residential amenities of properties in the vicinity.

**04/3968** – planning permission granted for retention of main house on site.

**04/1865** – permission granted for retention of existing house on site to the south.

**08/2368** – permission granted for erection of garage/store to rear s.t. domestic use.

**16/579** – permission refused for retention of building to rear of house currently in use as a dwelling; construction of an extension to the rear of the house to connect the two buildings together and construction of 3 no. rooflights on the rear roof slope of the building to the rear. Reasons for refusal were based firstly on a similar reason to

that used by the Board in 211483, and secondly, on the grounds of impact on visual amenity by reason of scale, design and form which would contravene the objectives of the LAP in terms of providing attractive urban spaces and preserving the character of the village.

**17/90** – permission refused for the construction of a two-storey extension to the rear of the house for three reasons

1. Serious injury to amenities/value of properties in vicinity due to scale, height and proximity, by reason of overshadowing and over-looking.
2. Over development of the restricted site by reason of scale, layout and inadequate provision for off-street parking.
3. Inappropriate design, scale and form which would fail to integrate with existing building and would detract from character and visual amenities of the area.

## **5.0 Policy Context**

### **5.1. Development Plan**

#### **Kerry County Development Plan 2015-2021**

The site is located within Anascaul Development Boundary as defined in Anascaul LAP, part of the Dingle Functional Area LAP 2012-2018.

The site has no specific zoning.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The third party appeal was submitted by TB Kennedy & Co. Consulting Engineers on behalf of Mr. & Mrs. Knightly, The Pines, Main Street (property to east of site). The main points raised may be summarised as follows:

- **Previous history** - Misrepresentation of the true intent of the application in light of the long planning history and continuous breaches of planning code and illegal development. It is submitted that the layout and design is more consistent with an extension to the guest house than private family

accommodation and given the history of non-compliance with the planning code, it is considered that the applicant is being mischievous in seeking to expand the guest house business. Doubts are expressed regarding the likelihood of the applicant complying with any planning permission in light of the history of retention applications and enforcement action.

- **Residential amenity** - The proposed development would be injurious to the residential amenities of the appellants and would result in loss of privacy. The construction of a 2-storey rear extension in 2003 has caused overshadowing of the appellants' property, which is just 2.5m to the east. The construction of the garage 25m due south further darkens their property. The proposed extension is 12.5m deep which extends the depth of the overall building to c. 22m. this would cast a shadow over the appellants' entire rear yard. It would also lead to overlooking and loss of privacy. Should the applicant proceed with attempting to 'link' the proposed extension to the garage as previously sought, this would result in a 40m structure running the length of the boundary.
- **Overdevelopment of site** - The proposal would result in congestion and substandard development. The plot area is estimated to be 706sq.m, or 550m excluding the parking area at the front. The footprint of the existing and proposed buildings combined is estimated to be 295sq.m (including the garage). Thus, the site coverage is approx. 50%. This compares with an average of 9-12% on either side. It is acknowledged that it may not breach the maximum of 0.5 site coverage and plot ratio as set out in KCC Development Plan, but should only be considered in exceptional circumstances.
- **Setback from boundary** - There would be a dead space of 800mm between the proposed extension and the boundary with the appellants. This will result in issues of maintenance, litter, dirt, smells and unsightliness.
- **Parking** – there are two - three spaces to the front, which are required for the applicants. As the site is already operating as a B & B, it will be necessary to provide additional parking for the residential element. This was a matter that formed a reason for refusal in two previous decisions, 16/579 and 17/90. The parking shortfall would result in overspill parking onto neighbouring properties



and onto the N86, which would be a traffic hazard. This issue was never addressed in respect of the B & B, as planning permission for running a commercial B & B was never sought. Note that the B& B offers a rent a bike scheme during the summer, which means that these bikes took up one of the parking spaces at the front.

- **Previous reason for refusal not addressed** - The previous reasons for refusal are still applicable. 17/90 was refused on the grounds of damage to amenity caused by scale, height, proximity to other houses, overlooking, overshadowing, inadequate parking, substandard residential development, contravention of KCC objectives. The current proposal is almost the same as 17/90, apart from the reduction to single storey. Thus, it must be refused for the same reasons except for overlooking and height.
- **Miscellaneous matters** – the applicant has failed to demonstrate that adequate provision would be made for connection to public services such as water and sewerage, waste management on site, health and safety, emergency services, food safety and fire safety requirements etc.

## 6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

## 6.3. First party response

Letter received from applicants on 23/04/18. This is mainly in the form of a rebuttal of the grounds of appeal. It is acknowledged that the applicants have erred in the past but assert that they fully intend to comply with the planning code in the future. In respect of parking, it is pointed out that they have 3 spaces at the front and 3 room for 3 spaces at the rear, which is more than enough. There are no parking restrictions in the village and neither KCC Roads Dept. nor TII have raised objections. The reason for 4 patio doors is for light as the eastern elevation cannot accommodate any windows.

The letter was accompanied by a letter from the family's G.P. and from an Occupational Therapist at Kerry Intervention and Disability Services Team. The applicant reiterated that her 11-year-old son has autism and that the family

accommodation is very much needed, particularly the quiet room. The letter from the GP supports this and provides additional information regarding the child's needs, including accommodation separate from the business. The Occupational Therapist pointed out that living away from the business would be problematic for the child as he would be separated from his parents.

## **7.0 Assessment**

7.1. It is considered that the main issues arising from the appeal are as follows: -

- History of unauthorised use and development and purpose of the proposed development
- Intensity of use and development of site
- Residential Amenity of adjoining sites
- Adequacy of parking provision

### **7.2. Planning History and purpose of development**

- 7.2.1 It is clear from the file, and acknowledged by all parties, that the site has been the subject of a long and complex planning history including both the grant and the refusal of planning permission for various development proposals on the site, which also included unauthorised development, some of which involved serious breaches of the planning code. In particular, the construction of a house in the rear garden, in contravention of a previous refusal of planning permission, has resulted in issues amounting to substandard development which has impacted on the residential amenities of neighbouring properties. However, these matters have largely been addressed by means of a combination of retention permissions and enforcement by the planning authority.
- 7.2.2 It was unfortunate that I was unable to gain access to the garage building on site, but it was clear from my inspection that it is not currently occupied as a dwelling unit. The Board will note that the pursuance of enforcement matters in respect of any breaches of the planning code or unauthorised development is a function of the planning authority. In this respect, it is noted that the Area Planner's Report had expressed concerns that the kitchen units and a TV were still present within the shed, which could facilitate the return of the shed to domestic use. However, the

applicant's response was that the units are used for storage of tools and other such items and that the TV and satellite has been removed from the wall. The windows and doors are blocked up and it is clear the use at present, which is in the middle of the tourist season, is not as domestic accommodation. It is considered that should any further unauthorised use of the building occur in the future, it would be a matter for the planning authority to decide whether to take enforcement action.

7.2.3 The appellants also pointed out that the scale and design of the proposed extension, with 3 bedrooms and a 'quiet room', together with the fact that the bedrooms would be fitted with individual patio doors, lends itself to use as an extension to the B & B, and that should the garage return to domestic use for the family, this would result in an intolerable situation. The P.A. decision has included two conditions which are designed to address these concerns, namely Conditions 5 and 6 (see 3.1 above). These conditions prohibit use of the extension as part of the B & B, restrict its use to private residential accommodation, require all three elements to be used as one integral unit and require the shed to be used for domestic storage purposes only.

7.2.4 The design and scale of the proposed extension is not inappropriate as an extension to a house that is in use as a B & B. The proposal would result in a 3-bedroomed residential property with four additional rooms forming part of the B & B. My only concern is the proposed layout, complete with individual patio doors to each of the proposed bedrooms. It is considered that the issue of light could easily be addressed by means of high level windows on the eastern elevation and/or skylights. The patio doors would, however, provide an appropriate means of escape from fire, given that the internal route to the outside would be through the kitchen, (which incidentally does not have any proposed windows). Notwithstanding this, and given the planning history of the site as outlined above, it is considered that the layout should be required to be redesigned to provide for a safe means of escape from fire whilst also providing adequate light and ventilation to all rooms in the extension.

### **7.3. Intensity of use and development of site**

7.3.1 The site area is given as 740m<sup>2</sup>, with the existing floor areas for the house as 133.26m<sup>2</sup> and for the garage as 54m<sup>2</sup>. The existing plot ratio is therefore estimated to be 0.25 and the existing site coverage as c. 19%. The proposed GFA is estimated at 270m<sup>2</sup>, which gives an estimated plot ratio and site coverage for the proposed

development of 0.36 and 30%, respectively. It is considered that these parameters are not indicative of a high density of development and would not amount to overdevelopment of this urban site on the main street of the village. The site is quite large and long (over 55m), which means that even with the extension in place, there would still be adequate space for private amenity space and additional off-street parking.

- 7.3.2 The previous refusal by the Board, 211483, was for the introduction of a second dwelling unit onto the site, with a separate set of amenity and parking space requirements, whereby it would have been likely to give rise to a cross section with separate ownership issues. This was refused on the grounds of being haphazard backland development. Similar reasons were used when the applicant sought to retain the use of the garage as a separate dwelling unit (16/579) and again (17/90) when the applicant sought to construct a large 2-storey extension to the rear of the house. It is considered, however, that the current proposal differs significantly from these previous schemes in that it is now proposed to construct a single storey domestic extension and to use the garage as a domestic store as originally intended. I do not accept, therefore, that the reasons for refusal of these previous decisions are relevant to the current proposal before the Board.

#### **7.4 Residential amenity**

- 7.4.1 In response to the P.A.'s request for FI, the applicant carried out a shadow impact assessment, following which, the proposed extension was revised significantly from a one and a half storey development to a single storey structure with a flat roof. A further shadow impact analysis was carried out and it was concluded that the impact from the proposed extension would be negligible in terms of overshadowing of adjoining properties. The planning authority agreed with this conclusion. I would also agree that the proposed single storey structure would not overshadow the neighbouring garden due to its height, design, siting and slight separation from the boundary.
- 7.4.2 Issues regarding loss of privacy and overlooking have been raised, but seem to relate more to the former use of the garage as a residential unit than to the proposed development. There is currently no proposal to provide any windows on the eastern elevation. However, as stated above, it is considered that the proposed layout should

be revised, which could result in the introduction of high level windows on this elevation. Should the Board be minded to grant permission, a requirement to ensure that any such windows are at a level that would avoid overlooking and would be fixed could also be incorporated into any conditions.

7.4.3 The appellant considered that the applicant is likely to construct a link between the proposed extension and the existing garage in the future. However, no such proposal is before the Board and a previous application for a similar structure (16/579) was refused by the P.A.

7.4.4 It is considered that the proposed development would not result in any significant injury to the residential amenities of neighbouring properties or of the area.

## **7.5 Adequacy of parking on site**

7.5.1 The site is 740sq.m in area with adequate space to park three cars off the street in the front. There is adequate space to drive along the western side of the house to the rear garden. As the domestic garage is to be used for storage etc., it could be used for parking of at least one of the cars associated with the family accommodation. Alternatively, there is enough space within the rear garden area for the parking of one or two vehicles. It is considered, therefore, that adequate space exists on site to accommodate the parking needs of the development.

## **7.6 Other matters**

The planning application indicates that the site will be connected to the public water and sewerage systems. As it is not proposed to introduce any additional planning units, there is no need for separate waste management systems to be put in place and the site is large enough to accommodate an appropriate system for recycling of waste etc. The issues of food safety, fire safety and other such environmental matters come within codes other than the planning code.

## **8.0 Recommendation**

8.1. It is recommended that planning permission be granted for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2015-2021, to the existing pattern of development in this central village location, and to the design, layout and limited scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and 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 10<sup>th</sup> day of January 2018 and the 16<sup>th</sup> day of February 2018, and by the further plans and particulars received by An Bord Pleanála on the 23<sup>rd</sup> day of April 2018, 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. The proposed development shall be amended as follows:
  - (a) The design of the extension shall be altered such that the patio doors on the western wall of the flat roofed structure shall be omitted and that these bedrooms would be lit by means of windows instead of doors, and that an alternative means of escape from these bedrooms is provided by means of a revised internal layout.

- (b) Any windows inserted into the eastern elevation shall be high level windows, glazed with obscure glass and fixed to ensure that there would be no overlooking of the adjoining property to the east.

The revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

**Reason:** To prevent overlooking of the adjoining residential property and in the interests of the residential amenities of the future occupiers of the structure.

3. No access shall be permitted to the flat roof save for maintenance.

**Reason:** In the interest of protection of residential amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them,

(a) The use of the extension shall be restricted to private residential accommodation ancillary to the main dwelling and shall not be used as part of the existing commercial guest house accommodation.

(b) The use of the garage/shed shall be restricted to ancillary domestic storage purposes only and shall not be used as habitable accommodation or as part of the commercial guest house accommodation.

**Reason:** - In the interest of residential amenity

5. The existing dwelling, existing garage and proposed extension shall be jointly occupied as a single planning unit and no part of the overall development shall be sold, let or otherwise transferred or conveyed as part of the dwelling.

**Reason:-** To restrict the use of the site in the interests of residential amenity.

6. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

7. Water supply and drainage arrangements, including the 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.

8. 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.

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Mary Kennelly  
Senior Planning Inspector

27<sup>th</sup> July 2018