



An  
Bord  
Pleanála

## Inspector's Report ABP-302307-18

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<b>Development</b>	Change of use from Leisure rooms to Holiday home. Retention of 2 roof lights and door.
<b>Location</b>	Staigue, Dunkerronsouth, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/501
<b>Applicant(s)</b>	Alfred E. Jones
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Alfred E. Jones
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> November 2018
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (0.599ha) is located in a remote upland area of the Iveragh Peninsula, approx. 9 Km to the south-west of Sneem and about 3 Km from the village of Castle Cove in south west County Kerry.
- 1.2. The site is connected to the public road which leads to Staigue Fort by an unsurfaced laneway which is part of the Kerry Way Walking Route. The site is located west of the N70 Ring of Kerry tourist scenic route.
- 1.3. The property is near the head of a valley, which runs downhill in a south-westerly direction from the edge of the Macgillicuddy Reeks. Staigue Top is a peak of c. 459m located to the west of the site. The early Iron Age Staigue Fort is located up hill and to the northeast of the site. The site is part of a larger agricultural land holding of c. 13 ha, which is farmed by the applicant and his spouse. The landholding is used as upland grazing land.
- 1.4. The property subject to change of use comprises a small (c. 100sq. m) single storey pitched roof structure with velux roof lights located to the northern portion of the site. In use as leisure space being incidental to the enjoyment of the existing dwelling located to the south of the site. The building is served by its own waste water treatment system permitted under PL08.231808 / Reg. Ref. 08/2126

## 2.0 Proposed Development

- 2.1. The proposal comprises:
  - Permission to Change the use of leisure rooms to holiday home, comprising of two bedrooms, bathroom, living, kitchen and dining area
  - Along with Retention Permission to retain 2 no. roof lights to south facing roof and door in lieu of window to north facing front elevation
  - It is stated the existing GFA of the building is circa. 104 sq. m

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Permission was Granted subject to four number conditions. Condition of note is number four which states:

C4. 'The existing dwelling house on the site and proposed holiday home shall remain as one integral unit under one ownership and neither property shall be disposed of as a separate entity'.

#### 3.2. **Planning Authority Reports**

3.2.1. Planners report: Having regard to the nature extent and location of the proposed development, the planning history on the site and any submissions made in relation to the application, it is considered that subject to condition the proposed development would not be visually obtrusive and would not injure the amenities of the area.

3.2.2. County Archaeologist: No mitigation is required.

#### 3.2.3. **Other Technical Reports:**

None

#### 3.3. **Prescribed Bodies**

None

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

None received.

## 4.0 Planning History

- 4.1. **PL08.231808 / Reg. Ref. 08/2126** Permission to change the use of agricultural shed to games room and leisure area, a use being incidental to the enjoyment of the existing dwelling was refused planning permission by the p.a. however Permission was GRANTED on appeal by An Bord Pleanala.

The Board attached a condition requiring that the building be used 'solely for purposes which are ancillary to that of the main dwelling house on the site and shall not be occupied separately and shall remain within the same ownership of the permitted dwelling.'

- 4.2. **PL08. 221310, Reg. Ref. 06/1647** – The board granted permission for the house on the site on 26th June 2007. The planning authority had refused permission on grounds of visual impact. The shed which is the subject of the current appeal was present at the date of the previous inspection, 3rd May 2007, but was outside the site boundaries for the previous application.

## 5.0 Policy Context

### 5.1.1. Development Plan

- 5.1.2. The operative plan for the area is the **Kerry County Development Plan 2015-2021**. Chapter 3, Section 3.3 sets out Rural Development Policies. Section 3.3.2 deal with Amenity Areas and policies designed to protect the landscape of the county. The Plan identifies three types of rural landscape as follows:

- a) Rural General
- b) Rural Secondary Special Amenity and
- c) Rural Prime Special Amenity

- 5.1.3. The proposed site is located in an area zoned Rural General which is covered by Section 3.3.2.1 of the Plan. These areas constitute the least sensitive landscapes throughout the County and form a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.

5.1.4. Chapter 12 deals specifically with Zoning and Landscape. Policy relating to areas zoned Rural General in Section 12.3.1 Rural (c) states that *“it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development”*. Policy ZL-1 states that *“it is policy to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people’s lives”*.

5.1.5. Section 3.3.4 Holiday / Second Homes

The placement, renovation and restoration of existing premises will be considered and encouraged where appropriate.

5.1.6. Section 3.3.5 deals with Renovations or Restoration of Existing and Vacant Buildings situated in Rural Areas.

5.1.7. Chapter 13 sets out the Development Management considerations.

## 5.2. **Natural Heritage Designations**

The appeal site is located approx. 0.3 Km south from the Special Area of Conservation: Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC and approx. 1 Km north of Special Area of Conservation: Kenmare River SAC

## 5.3. **Environmental Impact Assessment (EIA)**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Appeal Against a Condition (Condition number 4) solely. The issues raised, in the First Party Appeal by DK Planning and Architecture on behalf of the applicant Alfred E. Jones are summarised as follows:

- The proposed change of use is to meet the needs of the applicant's adult children who frequently visit with grandchildren.
- The appellant welcomes the decision to grant however objects to Condition no. 4, namely the issue of ownership.
- Submit that C.4 is not reasonable, relevant or necessary and therefore not in accordance with the Development Management Guidelines for Planning Authorities, 2007.
- The condition would unduly interfere with their future inheritance plans.
- In the instance of Reg. Ref. 08/2126 (PL08.231808) the proposed use as a games room and leisure area was stated in the application to be directly incidental to the enjoyment of the existing dwelling. The current proposal differs in that it is for a holiday home, which is not directly dependent of the existing dwelling house.
- The p.a. attached C4 without giving clear reason.
- The restriction has no time limit and applies in perpetuity, is disproportionate and not reasonable.
- An alternative condition where it has been considered appropriate to constrain ownership, as on occasion in the case of planning permission for full time residential use in rural areas under pressure, a time limit of seven years has been applied.
- The applicant requests that a 7 year time limit constraint be applied instead of C4.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 7.0 **Assessment**

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

- **Appeal against Condition**
- **Appropriate Assessment**

### 7.1. **Appeal against Condition**

I highlight that the subject appeal is a first party appeal, solely, against the attachment of a condition. This is an appeal against Condition 4 only. Given the foregoing and having regard to section 139 (1) of the Planning and Development Act, 2000, as amended, I consider that a 'de novo' consideration of the development is not warranted in this instance.

In my judgement the principle factors for consideration in this appeal relate to evaluation of Condition no. 4 of Schedule (2b) of the planning authority's draft decision to grant planning permission Reg. Ref. 18/501 which states:

'The existing dwelling house on the site and proposed holiday home shall remain as one integral unit under one ownership and neither property shall be disposed of as a separate entity'.

There is a somewhat protracted planning history associated with the appeal site, see section 4.0 of this report above.

The main dwelling house on the overall landholding was granted planning permission under PL08.221310 in 2007. This was on the site of an earlier farm dwelling dating from the early nineteenth century.

On foot of Reg. Ref. 08/2126 / PL08.231808 permission was granted by the Board, in 2009, for change of use of an agricultural shed at this location to a games and leisure area, incidental to the enjoyment of the existing dwelling. The Board attached a condition requiring that the building would be used 'solely for purposes which are ancillary to that of the main dwelling house on the site and shall not be occupied separately and shall remain within the same ownership of the permitted dwelling.'

The proposed development is for the change of use of the building subject of PL08.231808 from leisure rooms to holiday home, to comprise two bedrooms, bathroom, living kitchen dining area, along with retention permission for two roof lights and a door. The development entails little physical alteration essentially being a change of use.

The first party submit that Condition no. 4 is not necessary, is not sufficiently relevant to the development and that the restriction has no time limit and applies in perpetuity, is disproportionate and not reasonable. It is contended that the condition would unduly interfere with the owner's future inheritance plans.

It is argued that in the instance of Reg. Ref. 08/2126 (PL08.231808) the proposed use as a games room and leisure area was stated in the application to be directly incidental to the enjoyment of the existing dwelling. The current proposal differs in that it is for a holiday home, which is not directly dependent of the existing dwelling house.

The applicant requests that a 7 year time limit constraint be applied instead of C4.

Cognisance being had to the planning history of this site and to the constraints of the severely restricted access, via an unsurfaced, rough rubble, agricultural laneway, controlled by agricultural gates. I consider that Condition 4 is reasonable, justifiable and enforceable. I am of the opinion that to permit a second unrestricted separate dwelling, albeit a holiday home at this rural remote location, in the absence of compliance with the rural settlement strategy set out in Section 3.3 of this Plan would set a negative undesirable precedent.

Objectives numbers RS-1 to RS-6 constitute the overall objectives relating to Rural Housing Policy. I note that:

**RS- 6** which states: 'Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition, such development

shall be subject to the inclusion of an occupancy clause for a period of 7 years. And **RS-12** Accommodation demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, waste water treatment and the protection of important landscapes and environmentally sensitive areas.

Table 3.7 of the County Development Plan states that in an area zoned Rural General, any development permitted shall be for the use as a permanent primary place of residence.

It is clear policy of the Development Plan to regulate residential development in Rural Areas.

Cognisance being had to the planning history, in particular, Reg. Ref. 08/2126 / PL08.231808 (the proposed use as a games room and leisure area was stated initially in this application to be directly incidental to the enjoyment of the existing dwelling). Specifically, the Board Grant of planning permission attached a condition requiring that the building would be used 'solely for purposes which are ancillary to that of the main dwelling house on the site and shall be occupied separately and shall remain within the same ownership of the permitted dwelling'.

Given the foregoing I am of the opinion that condition 4 should not be omitted or amended to a 7 year occupancy clause.

## 7.2. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, to the infrastructure in place, nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed 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

I recommend that under section 139 (1) of the Planning and Development Act, 2000, as amended, Condition number 4 of Schedule 2b stand un-amended.

## 9.0 Reasons and Considerations

### Having regard to-

- (a) The Planning History associated with the subject appeal site.
- (b) The holiday home nature of the proposed development / non-permanent primary place of residence.
- (c) The rural settlement strategy set out in Section 3.3 of this Plan.
- (d) Severely inadequate restricted access.

The Board considered that Condition 4 should stand un-amended.

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Fiona Fair

Planning Inspector

21.01.2019