



An  
Bord  
Pleanála

## Inspector's Report ABP-303966-19

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<b>Development</b>	Extension to clubhouse and retention of clubhouse as constructed
<b>Location</b>	Castle Lawns, Ballyheigue, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/991
<b>Applicant(s)</b>	Ballyheigue Castle Golf Club
<b>Type of Application</b>	Permission and Retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Kerry Vintners Association
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> May, 2019
<b>Inspector</b>	Kevin Moore

## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located at Ballyheigue Castle Golf Club in the village of Ballyheigue in north-west County Kerry. There is an existing single-storey clubhouse bounded to the east by a car parking area, to the north by a putting green, and to the south-west and south-east by residential properties. The ruins of Ballyheigue Castle lies immediately to the south. The structure is listed as a protected structure in the current Kerry County Development Plan. The proposed extensions to the north and east of the existing clubhouse building would be developed in areas that are in use as patios/access areas to the clubhouse.

## 2.0 Proposed Development

- 2.1. The proposed development seeking permission would comprise single-storey extensions to the north and east of the existing building to accommodate a function room entrance and a new members' bar and an extended entrance lobby. Following a further information request from the planning authority, the application was expanded to include permission for the retention of the clubhouse arising from the requirement to retain a front porch and a store to the rear.
- 2.2. The total floor area of the new extensions would be 86.15 square metres. The overall site area is stated to be 0.23 hectares.

## 3.0 Planning Authority Decision

### 3.1. Decision

On 20<sup>th</sup> February, 2019, Kerry County Council decided to grant permission for the proposed development subject to 8 conditions. Condition 8 was as follows:

*"8. The use of the building shall be confined to uses directly associated with the golf club.*

***Reason: To regulate the use of the site and in the interest of residential amenity."***

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

In the first report the Planner noted the site's planning history, development plan policy and objectives, and reports and third party submissions received. It was noted that the front porch of the existing building had not been constructed in accordance with a previous planning permission and that there was a store to the rear of the clubhouse for which permission had not been granted. It was considered that the proposed extension would improve the visual appearance of the building and that the development would not negatively impact on residential amenity. Regarding third party submissions, it was recommended that the same condition restricting the use of the building as attached with the Board decision under Appeal Ref. PL 08.127140 be attached if a grant of permission was to issue. A request for further information was recommended seeking to regularise the development for which there was no permission.

In the second report the Planner reiterated the recommendation to attach a previous condition attached to the Board decision under Appeal Ref. PL 08.127140. A grant of permission subject to conditions was recommended.

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

The County Archaeologist noted the site is partially located within the zone of archaeological potential associated with Ballyheigue Castle. It was requested that all ground disturbance associated with the development be archaeologically monitored under licence.

## **3.3. Third Party Observations**

An objection to the proposed development was received from Kerry Vintners Association. The grounds of the appeal reflect the concerns raised. A further objection was received from Kevin O'Sullivan who raised concerns relating to traffic and impact on the adjoining Ballyheigue Castle.

## 4.0 Planning History

ABP Ref. PL 08.127140

Permission was granted by the Board in 2002 for the retention of the use of the golf club premises and alterations and extensions to same. Condition 2 of the Board's decision was as follows:

"2. *The use of the building shall be confined to uses directly associated with the golf club.*

***Reason:*** *In the interest of clarity and residential amenity."*

## 5.0 Policy and Context

### 5.1. Development Plan

#### ***Municipal District Local Area Plans 2018-2024***

Kerry County Council has prepared new Municipal District Plans. On its web site plans are available for Killarney and Tralee. No plan is available for the Listowel area.

#### ***Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019***

The Plan contains the Ballyheigue Local Area Plan. Ballyheigue Castle is acknowledged as a National Monument and protected structure.

The overall vision for Ballyheigue is to ensure that it develops sustainably as an attractive location for residents and tourists alike and that future development preserves the towns' character as a seaside town and reinforces it where necessary.

There is no specific zoning associated with the appeal site.

### 5.2 Appropriate Assessment

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be

likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

### **5.3 EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

## **6.0 The Appeal**

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

The grounds of the appeal may be synthesised as follows:

- Concern is expressed over the non-adherence to relevant conditions set out in the governing planning permissions relating to this site and to the extent to which it is affecting the running of the appellants' businesses.
- The breach of conditions is affecting the fulfilment of the appellants' business plans.
- The current space provided is more than adequate to accommodate the activities directly associated with the golf club.
- A golf clubhouse is strictly for use of golf club members. This golf club is currently advertising bar facilities directly to the public and use of the clubhouse is being advertised for christenings and parties.
- The planning authority has taken little heed of the appellants' concerns, attaching a condition that is not adhered to and is not enforced.
- The attached condition (No. 8) weakens the previous status because it is subject to interpretation as to what constitutes "uses directly associated with the golf club".
- In the absence of meaningful conditions that are subject to enforcement, a refusal of permission is requested.

- It is unclear who has made the application, Mr. Timothy Kenny or Ballyheigue Golf Club.

Details of advertising by the golf club for the holding of events not associated with the golf club are provided.

## 6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- The golf club is a modest enterprise run in accordance with all relevant laws, rules and regulations.
- The proposed extension is a modest attempt to improve the clubhouse in order to progress after the recent recession and attract new members to ensure viability of the club.
- Excluding the vintners, there are no negative submissions regarding the application.
- It is necessary to improve the clubhouse offering in order to comfortably accommodate required numbers on days of major club events and to maintain and boost membership numbers.
- The golf club also attracts visitors and the importance of tourism is recognised in the Kerry County Development Plan and in national policy.
- The appellants openly acknowledge that their appeal is based on economic argument. The financial circumstances of the Ballyheigue Vintners are extraneous to the proper planning and sustainable development of the area.
- The appellants are not privy to the details and workings associated with the running of the golf club. The arguments presented in the appeal as justified grounds for refusal are conjecture.
- With regard to the issue of impact on Ballyheigue Castle, it is submitted that the castle ruins take pride of place, the club invests continually in the protection of the historic grounds, the presence of people make damage to it less likely, and access to it is preserved by virtue of the club being in operation.

### **6.3. Planning Authority Response**

The planning authority submitted that the application was assessed in conjunction with reviewing all history files relating to the building on the site, that if there is a breach of conditions attached to a permission the enforcement section of the planning authority would be engaged, and that the design of the extension should improve the appearance of the building.

### **6.4. Further Responses**

In response to a request from the Board, the Department of Culture, Heritage and the Gaeltacht recommended a schedule of conditions relating to archaeology that should be attached in the event the Board grants permission for the proposed development.

In response to this submission, the applicant acknowledged the matters raised by the Department.

## **7.0 Assessment**

7.1 I consider that the principal issues of relevance to this appeal relate to the proposed use of the development and the impact on Ballyheigue Castle. The site forms part of an established land use as a golf club. I do not consider that the minor extensions to the clubhouse would likely generate any additional planning and environmental concerns, such as traffic concerns, if there is adherence to the permitted use.

7.2 I first note that the applicant has argued that the appellants acknowledge that their appeal is based on economic argument and submit that the financial circumstances of the Ballyheigue Vintners are extraneous to the proper planning and sustainable development of the area. It is my submission that the applicant is mistaken on this issue. This is a land use issue, an issue that has been regarded previously by the Board as significant, resulting in the attachment of Condition 2 in the granting of permission under ABP Ref. PL 08.127140. The use of this clubhouse for members is definitive. The Board's previous decision did not allow for use of this premises for extraneous activities that were unrelated to the golf club use. This could not have

been any clearer in the Board's decision. This condition was expressly included in this previous decision to exclude functions and other such activities that were unrelated to the functioning of the golf club.

- 7.3 The applicant's response to the third party appeal also stated that the golf club is a modest enterprise run in accordance with all relevant laws, rules and regulations. If the details submitted by the appellants relating to general advertising for functions being available at the golf club for birthdays, christenings, anniversaries, etc. are correct, then it is apparent that the clubhouse is not being run in accordance with its planning permission granted under ABP Ref. PL 08.127140. I particularly note that the applicant did not refute the validity of this advertisement.
- 7.4 Ensuring a development is functioning in an authorised manner in compliance with its planning permission is an enforcement issue which is the responsibility of the planning authority, namely Kerry County Council in this instance. Enforcement is not a role which the Board has in the planning process. Thus, any such non-compliance with permission granted under ABP Ref. PL 08.127140 lies with Kerry County Council to address.
- 7.5 In conclusion on this issue, I submit that the function of a clubhouse in this instance should be to maintain its primary purpose of serving the golf club members. It is entirely unacceptable to be seeking to extend such uses to an entertainment venue, bar, etc. that is openly available to the public such that it evidently undermines the viability of other such premises in Ballyheigue village itself and ultimately the sustainable functioning of the village. The Board clearly considered this to be a significant land use issue in its previous decision and there can be no reason to move away from this position, in the interest of the orderly development of the village. In the context of third party concerns, it may be reasonable to add to the Board's original condition to reinforce the type of use that is permitted within the clubhouse and to exclude those not permitted. With regard to enforcement, Kerry County Council would be required to take all necessary measures to ensure adherence to any planning permission that may issue.
- 7.6 With regard to the impact on Ballyheigue Castle, I submit to the Board that the minor extensions do not constitute such visually incongruous features that would undermine the setting of the nearby castle ruins or in any way impinge on its integrity



as a protected structure or National Monument. The proposed extensions are minor in scale and seek to complement the existing clubhouse building. Such development could not be seen to have any significant adverse impact on the castle. A condition requiring archaeological monitoring and measures as required by the Department of Culture, Heritage and the Gaeltacht at the time of construction would be an adequate response to archaeological concerns.

7.7 Finally, I note that reference has been made in the appeal to some confusion over who the applicant is in this instance. I am satisfied that the applicant Ballyheigue Castle Golf Club, being the same applicant as previously under ABP Ref. PL 08.127140, has sufficient legal interest for making this application and that the appellants have not demonstrated anything to the contrary.

## **8.0 Recommendation**

8.1. I recommend that permission is granted in accordance with the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the form and character of the proposed extensions and 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 seriously injure the amenities of the area or adversely impact on the adjoining Ballyheigue Castle, and would otherwise 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 drawings and details submitted to the planning authority on the 11<sup>th</sup> January, 2019 and 25<sup>th</sup> January, 2019, 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 use of the clubhouse building shall be confined solely to uses directly associated with the golf club and shall not be used for purposes unrelated to the function of the golf club.

**Reason:** In the interest of clarity, residential amenity and to protect the viability of the commercial core of the village of Ballyheigue.

3. The external finishes of the proposed extensions shall be agreed in writing with the planning authority prior to the commencement of development.

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

4. 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 and to ensure a proper standard of development.

5. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -
  - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works.

In the event of the revelation of archaeological features, these shall be planned and photographed and an interim report shall be submitted to the National Monuments Service section of the Department of Culture, Heritage and the Gaeltacht pending a decision as to how best to deal with the archaeology. The interim report shall also include an archaeological mitigation strategy outlining the preservation *in situ* and/or archaeological excavation of the features/deposits revealed. Where preservation *in situ* cannot be achieved, full archaeological excavation according to best practice shall be required, including an excavation reporting and post-excavation analysis.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

6. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Kevin Moore  
Senior Planning Inspector

20<sup>th</sup> June, 2019