



An
Bord
Pleanála

Inspector's Report ABP.305959-19

Development	Retention of alterations to existing dwelling house including construction of an enclosure to an existing balcony and all associated works
Location	Capparoe, Kenmare Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/931
Applicant(s)	Andrew Holmes
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Diana J. Dicks John O'Shea
Observer(s)	None
Date of Site Inspection	16 th March 2020
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the townland of Capparoe, which is approx. 9km to the west of Kenmare on the road to Sneem. It is located on the N70, which is the Ring of Kerry tourist route, and is situated on the section of the route that follows the coastline along the southern side of the Iveragh Peninsula. The site is located on the northern side of the road and is accessed directly from the N70, approx. 2.5km to the east of Blackwater Bridge. This section of the road is very narrow with a solid white line and no hard shoulders. There is a dense woodland on the southern side of the road which obscures any views of Kenmare Bay.
- 1.2.** The site area is given as 0.0737ha. The site is narrow and rectangular in shape and comprises a mid-terrace 2-storey dwelling with an attached single-storey store structure. The site relates to the middle dwelling house of a terrace of four houses, which has been altered and extended at first floor level at some point in the past. The existing houses on either side of the property consist of single storey dwellings with a pitched roof of slate, each of which have been extended into the attic and contain dormer windows facing the road. The appeal property, however, has been substantially altered with a large flat roof dormer extending the full width of the house, and the window openings on the front elevation have been replaced with several large windows.
- 1.3.** It can be seen from photographs on the file and from Google Maps Streetview, that prior to the recent renovations, there was a single-storey annex located between the main dwelling and the attached house to the west, which had become ruinous, and that the main dwelling had slate cladding to the front and side elevations and a rudimentary balcony fitted to the front. The single storey annex has recently been renovated and restored with a pitched roof of slate and a small dormer window. The main dwelling has also been renovated with new cladding added to the front and side elevations and all of the windows at ground and first floor have been replaced with large timber windows. The large box dormer has also been fitted with new cladding and a canopy has been added to the rear with small slit windows. In addition, the balcony area at the front has been enclosed with further timber cladding and a flat roof, which extends across the full width of the front elevation.

2.0 Proposed Development

- 2.1. It is proposed to retain the alterations made to the existing dwelling including the construction of an enclosure to an existing first floor balcony at the front and all associated site works. The structure to be retained is shown on the submitted plans as the enclosure of the first-floor balcony, which has been constructed over the existing porch/lobby area, which projects forward of the building line.
- 2.2. The floor area of the structure to be retained is 16.59sq.m. and the dimensions of the structure are 7.34m x 2.26m. It is identified on the floor plans as a 'relaxing area' and the remainder of the first floor is laid out as two bedrooms and a bathroom. The ground floor of the property appears to have been extended to the front (underneath the structure to be retained), and to the rear by c.9m for the full width of the house (6.25m). The front door is located to the side of the front "lobby" and leads to an "access archway to the rear", with a further door at the northern end of the accessway. The single storey attached structure to the west is stated to be "used as a store".
- 2.3. The front elevation of the structure is clad in a weatherboard/ timber material and two large windows have been inserted on either side of a double patio door. However, the patio door does not open onto any platform or balcony. The timber cladding has been extended along the sides of the first-floor structure and at the rear.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to one condition which required the development to be retained in accordance with the plans and particulars received by the planning authority on 05/09/19.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report noted the location of the site in a **Rural Secondary Special Amenity Area**. It was noted that such areas constitute sensitive landscapes which

can accommodate a limited level of development, which would depend on the degree to which development can be integrated into the landscape. Objections were noted from the owners of the adjoining properties on either side. It was stated that the objections regarding ownership and a right-of-way are civil matters.

It was considered that EIA was not required given the nature, scale and location of the project. Appropriate Assessment Screening was carried out and it was concluded that there is no likely potential for significant effects to Natura 2000 sites. Permission was recommended generally in accordance with the reason given by the P.A. in its decision.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

TII – no observations.

3.4. Third Party Observations

Diana Dicks, 1 Capparoo Cottages – Objection to proposed development on the grounds of visual amenity in respect of the cladding of the cottage in a “silver material which is not in keeping with a row of cottages on the Ring of Kerry.” It was also noted that the applicant had erected two locked doors at either end of the communal archway which interferes with the right-of way (in existence for 120 years) for the rest of the properties in the terrace.

John O’Shea, 2 Capparoo Cottages – it is claimed that he is the legal owner of both No. 2 and No. 3 Capparoo Cottages (No. 3 being the “existing terraced structure used as a store” identified on the submitted drawings). It was also pointed out that the applicant had referred to the address as Donore Cottages with a different numbering system, (i.e. application site being Nos. 8-9 Donore Cottages, rather than 2-3 Capparoo Cottages).

It is further stated that the applicant is occupying No. 2 and using No. 3 as an extension to No. 2, without his consent. Mr. O’Shea also objects to the visual appearance of the extension, which he says blocks his views. He further objects to

the incorporation of the right-of-way into the application site and the fitting of two doors at either end. Reference is made to the blocking of access to a shared driveway to the property.

4.0 Planning History

PA Ref 16/424 – planning permission granted in August 2016 for (a) the construction of a new pitched roof to replace existing flat roof on an existing terraced structure which will be erected to the same pitch as the existing adjacent dwelling and in accordance with the original roof that existed on the structure when it was used as a dwelling house and (b) erect a canopy to the rear of the existing terraced structure and widen the front door to accommodate storage of motorcycle and other large items and all associated works.

PA Ref 11/362 – Adjoining terraced house to west - planning permission granted to Tadhg Moynihan (Dec. 2011) for retention of single-storey extensions and alterations to existing cottage. It is noted from the documents on the P.A. website in relation to this file, that the site of the current appeal had already been extended with a box dormer, which was clad in slate and that the attached terraced structure was in a derelict state and overgrown with vegetation. However, the submitted plans had indicated that the appeal site and the property immediately to the east was one single dwelling, but there is no evidence in the documentation to substantiate this.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

In terms of Rural Settlement Policy, (3.3), the site is located in a **Stronger Rural Area** which is described as one where population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. The key challenge is stated to be to strike a balance between residential development in the towns/villages and in the rural areas.

Objectives RS1-RS6, inclusively, set out the policy for rural housing generally and requires compliance with the Sustainable Rural Housing Guidelines, the KCC Rural

House Design Guidelines (2209), EPA Code of Practice (WWTPs) and to ensure that all permitted rural dwellings are for use as the primary permanent residence of the applicant. These objectives also seek to give favourable consideration to vacant sites within existing clusters and to ensure that rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the county (**RS-4**).

Section 3.3.2 relates to development in Amenity Areas. The site is located within a **Secondary Special Amenity Area**, which is described as constituting a sensitive landscape which can accommodate a limited level of development, which will depend on the degree to which it can be integrated into the landscape. This is described as an additional policy response, and where there is an overlap, the policies relating to Amenity areas will take precedence. Certain provisions apply to SSAAs. These include a requirement for dwellings to be designed sympathetically to the landscape, to be sited such that they do not negatively impact the landscape, that they are not unduly obtrusive in terms of siting and design, with an emphasis on the retention of trees and hedgerows.

5.2. Natural Heritage Designations

There are several European Sites in proximity to the site. These are

- Old Domestic Building, Dromore Wood SAC (Site code 000353) - located across the road to south (within 10m).
- Kenmare River SAC (Site Code 002158) - located at coast to south of Dromore Wood (c.500m);
- Blackwater River SAC (Site code 002173) – located c.600m to north and west;
- Maulagowna Bog SAC (Site Code 001881) – located c.7km to south east; and
- Cloonee & Inchiquin Loughs, Uragh Woods SAC (Site code 001342) – located c. 4km to south.

6.0 The Appeal

6.1. Grounds of Appeal

The appeals are third-party appeals against the decision to grant planning permission. The appeals are from Diana Dicks (No. 1) and from John O'Shea (No. 2) The main points raised may be summarised as follows:

1. Blocking of right of way

The right-of-way is located between Nos. 2 and 3 and is intended to serve all four properties. The applicant had no right to enclose and block this right-of-way. It has been in use for over 120 years. One of the appellants has provided evidence in the form of maps and deeds to substantiate this. It is claimed that access to the rear gardens of these properties will be unavailable and it is requested that access be re-instated.

2. Ownership of appeal site

It is disputed that the applicant owns the property. It is stated that he does not have deeds to either property (No. 2 or 3) and that he did not have consent to carry out the development in 2016 or the more recent one the subject of this application/appeal.

3. Visual amenity

It is considered that the covering of the façade in a silver material is not in keeping with the row of four cottages on Ring of Kerry, which is a picturesque area. Concern was raised regarding the safety of the material used given the recent disaster at Grenfell Towers in London.

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on 28th November 2019. The following comments were made:

- (1) The existing structure accords with the development plan Section 3.3.5 which requires the scale and architectural treatment of the proposed works to be sympathetic to the character of the original structure and the surrounding area

including adjoining nearby development. It is considered that the proposed development, in terms of the external cladding and the enclosure of the balcony would not negatively impact on the visual or residential amenities of the area.

- (2) The issues of the disputes regarding the right of way and the ownership of the lands were considered to be civil matters. However, a map showing the right-of-way or the area to which it pertains was not submitted.

6.3. First party response to the Grounds of Appeal

The first party responded on 18th December 2019. The points made may be summarised as follows:

- A copy of a letter with photographs was provided. This letter had been addressed to Ms Diana Dicks and Mr. Jim O'Shea and related to the issues of the right of way. It claimed that the doors which had been erected would remain open for access purposes, but prior notice was requested in the interests of security and convenience.
- The submission from John O'Shea was believed to be one from an "unknown party" with an address at Essex, England, which was considered to be partially illegible. It is stated that Mr. O'Shea has no right to comment as he "mistakenly claims ownership to a neighbouring property" which is being dealt with by his solicitor.

7.0 Assessment

It is considered that the main issues arising from the appeal relate to the impact on the visual amenity of the area, to the claims of interference with a right-of-way and lack of estate/interest in the lands and to the planning history of the site.

7.1. Visual amenity

- 7.1.1. The site is located within a Rural Secondary Special Amenity Area, wherein development proposals must be designed sympathetically to the landscape, be located on sites that do not negatively impact on the landscape character and must not be unduly obtrusive in their siting and design. It is considered that the siting of

the existing dwelling on an elevated site overlooking the long-established Ring of Kerry tourist route means that the need to integrate any development on this prominent site into the landscape is of particular importance. It is acknowledged that the site is set back from the road and is screened from the scenic views along the coastline by the dense woodland opposite. Nevertheless, the site comprises a row of prominent vernacular cottages which requires a sympathetic design approach in such a sensitive landscape setting.

- 7.1.2. The cottages are of a traditional style which were originally single storey. It is noted that all have been altered to some extent with accommodation provided in the roof space, albeit largely within the original pitched roofs, with dormer windows. As can be seen from the drawings and photographs on file, No. 2 has been extended by means of a large box dormer. It is considered that this extension and alteration radically alters the form, roof profile and integrity of the terrace of traditional cottages and introduces a visually obtrusive element in the middle of the terrace. The scale and bulk of this addition is considered to be wholly out of character with the scale and design of the original cottages.
- 7.1.3. The development that is proposed to be retained seeks to further alter the original box dormer, which had been clad with the same slate as used in the adjoining pitched roofs, by introducing new materials and very large scale, non-traditional window and door openings. The entire front façade projects forward of the original building line of the terrace which highlights the different design approach in the middle of the row of cottages. The square shape of the roof profile, together with the use of a silver coloured timber weatherboard cladding, makes the roof appear much larger and higher than its neighbouring more discrete slate-clad pitched roofs. It is considered that it creates a visually jarring eyesore and discordant feature in the centre of the terrace. It is further considered that the large-scale timber framed patio door, together with the large timber-framed windows on either side, draw attention to the extension, which could not be described as sympathetic to the landscape or to the terrace of which the dwelling forms an integral part. The prominent location of the site and row of cottages on elevated ground overlooking the Ring of Kerry tourist route, with little or no screening of the development from the public road, renders the proposed development inappropriate and harmful to the landscape character and visual amenity of the area at this location.

7.1.4. It is considered, therefore, that the proposed alteration/extension to be retained is unduly obtrusive and would have an adverse impact on this sensitive area of the landscape. The proposed development would not, therefore, be well integrated into the landscape and would fail to comply with the requirements of the County Development Plan for this Rural Secondary Special Amenity Area, which would create an undesirable precedent that would undermine the policies and objectives for such sensitive landscapes.

7.2. Land ownership and right of way

7.2.1. The third-party objections have raised concerns regarding land ownership issues and the issue of the blocking up of a right of way. In terms of the land ownership, it is claimed that the applicant does not own either No. 2 (dwelling) nor No. 3 Capparoo Cottages (the store) and that this matter is in dispute between the parties. With respect to the ROW, it is claimed that the applicant has installed two doors at either end of the “passageway” which has existed for 120 years, and which has provided access to all of the occupants of the four cottages to the garden area at the rear. The effect of these doors is to restrict access along the right-of-way, which is further restricted by the placing of a lock on a gate from the public road through the site. It is claimed that the right-of-way provides the only access to the two adjoining properties to the rear of their respective premises.

7.2.2. The P.A. has responded to these objections by stating that both issues are civil matters. The applicant has responded by stating that he has written to the adjoining owners advising that

“There has been a wooden gate in the alleyway up to two days ago, 9th April 2019, on which date I had two doors fitted for BER rating/insulation purposes. These doors, as with the wooden gate, will remain unlocked for access purposes.....I would respectfully request, and consider it a courtesy, that you would let me know when you would be coming through, as my kitchen window and front door face onto the alleyway, also I may need to remove some small items from the alleyway to facilitate your bringing through any items that would be needed to carry out your maintenance work.....I indeed have put a lock on my front gate, as you do with your own front gate, for the purpose of security and privacy. I would appreciate

some short notice of 24 hours of your intended visit, so that I can accommodate you....”

- 7.2.3. I would agree that the establishment of ownership rights to a property would generally be a civil matter, as the applicant would ordinarily have to demonstrate that he/she has sufficient interest in the lands to carry out the development. However, in this instance, the development has already been carried out and may include other elements that are unauthorised. Furthermore, the matter of blocking up the right-of-way is one that deserves more attention.
- 7.2.4. The appellants have provided some evidence of the existence of a right of way with the grounds of appeal. Evidence has also been provided of the existence of the open archway between Nos. 2 and 3. The developer has not, however, demonstrated that he has sufficient interest in the lands to erect the doors, which have had the effect of obstructing the right-of-way, which is the sole means of access to the rear of the adjoining properties at Nos. 1 and 4 Capparoo Cottages, respectively. In fact, the developer has provided evidence in the form of a letter, that he has indeed erected these doors apparently without the consent of the other owners, and that he intends to provide access to these parties on a restricted basis, with prior notice, on his own terms, without the agreement of the said parties.
- 7.2.5. It is considered that the confirmation of the legal status of a ROW and of any alleged interference with an established right of way, are matters that are likely to be resolved ultimately in the courts. However, it is considered that the erection of these doors are likely to have an adverse effect on the residential amenities of the adjoining owners by restricting access to the rear gardens of the adjoining properties. As the developer has not demonstrated sufficient legal interest to do so, it is considered that the Board is, therefore, precluded from giving further consideration to the granting of permission for the development the subject of the application.

7.3. Planning history of site and authorised nature of the development on site

- 7.3.1. The appeal site comprises two of the original four attached cottages. It is clear from the submissions on the file that No. 2 has been altered in the past with the replacement of the original pitched roof with a non-traditional extension at first floor level, in that a large box-shaped dormer was added prior to 2011. This extension and alteration, which radically alters the roof profile of the cottage in the middle of the

terrace, does not appear to have the benefit of planning permission. However, the planning authority granted permission (16/424) for alteration and extension at roof level of the adjoining 'store' with the erection of a canopy at the rear, in 2016. It is noted that no reference to this seemingly unauthorised structure on the adjoining cottage, within the red line boundary, is made in the planning reports. Thus, the planning status of the box dormer is unclear.

- 7.3.2. It is noted from the history file (16/424), however, that the works which resulted in the enclosure of the right-of-way appear to have been initiated when the renovation of the 'store' building and erection of the rear canopy were undertaken. Photographs provided by the appellants show that it was originally an open archway, but that a wooden gate was erected at the northern end at that time. In the meantime, the applicant has erected two domestic type doors with locks at either end of the passageway and has installed a window and a "front door" opening onto the passageway. It is stated that these works were undertaken in April 2019.
- 7.3.3. This matter has not been specifically included in the planning application before the Board, but these alterations have clearly been undertaken without the benefit of planning permission. At the time of my inspection, it was not possible to gain access to the property. However, Drawing No. 616/H/01 Rev. A (14/04/16) clearly shows "Access Archway to Rear" with no doors present. It is further noted from the plans submitted with the current application/appeal (6319/H/01 Rev. A dated 04/09/19), that a door on the western elevation of the "lobby" is shown opening directly onto the passageway, which was not present in the 2016 drawings. Neither was there any indication of a window opening (from kitchen) onto this passageway.
- 7.4. Thus, it would appear that the developer has introduced alterations to the structure without the benefit of planning permission. These works seem to have had the effect of incorporating the access archway into the properties known as Nos. 2 and 3 Capparoo Cottages, or at the very least, restricting access to the rear garden area from the adjoining cottages at Nos. 1 and 4, respectively. It is considered that the development proposed to be retained, would therefore, comprise and extension and alteration to an unauthorised structure, and that in these circumstances, it would be inappropriate for the Board to consider the grant of permission for the development proposed to be retained.

7.5. Appropriate Assessment

- 7.5.1. The P.A. reports screened out appropriate assessment. It is noted that the closest European site is Old Dromore Wood SAC (000353), which is c.10 metres to the south, across the road. The site is located approximately 500m from Kenmare River cSAC (002158) – immediately to the south of Dromore Wood; and c.600m from Blackwater River SAC (002173).
- 7.5.2. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

7.6. Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Having regard to the location of the site on a prominent, elevated site on the established Ring of Kerry Tourist Route and within a rural area designated as a Secondary Special Amenity Area in the current Kerry County Development Plan 2015-2021, wherein it is required that development is designed to be sympathetic and sensitive to the landscape, the development proposed to be retained, by reason of the excessive scale, bulk, design, fenestration pattern and materials used in the alterations to the front façade would result in an obtrusive feature in the landscape at this location, which would seriously injure the visual amenities of the area and would fail to be adequately absorbed and integrated into the landscape. The development proposed to be retained, would therefore, fail to comply with the provisions of the County Development Plan,

would set an undesirable precedent for other such development in the vicinity and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has

(a) Sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land or

(b) the approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of planning permission for the development the subject of the application.

3. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a structure which is unauthorised and that the proposed development would comprise the extension and alteration of this unauthorised structure. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of permission for the proposed development in such circumstances.

Mary Kennelly
Senior Planning Inspector

23rd March 2020