



An  
Bord  
Pleanála

## Inspector's Report ABP 306759-20

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<b>Development</b>	Retention of alterations to dwelling, new flat roof to rear, rear extension, alterations to rear and side boundary walls and removal of annex at front.
<b>Location</b>	30 O'Kelly's Villas, Killarney Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	19/1244
<b>Applicant</b>	Henry Bartlett
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	Jennifer Leane
<b>Observers</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> May 2020
<b>Inspector</b>	Mary Kennelly

## 1.0 Site Location and Description

- 1.1.1. The site is located within a long-established housing estate which is within easy walking distance of Killarney town centre. O'Kelly's Villas forms part of the Marian Terrace estate which is located to the east of Rock Road (R876). The site is located within a cul-de-sac of mainly terraced housing which is broken up into blocks of 6 units and is close to the end of the cul-de-sac. It forms part of the block Nos. 29-34 and is situated opposite a green public open space area. There is a rear lane which runs parallel to the street from where rear access to the site is available.
- 1.1.2. The site comprises a mid-terrace property which has been extended to the front and the rear together with a large outbuilding adjacent to the rear boundary. The site area is given as 0.0115ha and the existing floor area as 115.41m<sup>2</sup>. The porch (c.4m<sup>2</sup>) at the front of the house has been demolished and a new window inserted in its place, and the façade has been rendered. There is a rear extension to the kitchen (c.23m<sup>2</sup>) with a small yard (c.9m<sup>2</sup>) followed by a further extension (c.26m<sup>2</sup>). A small link extension has been constructed between the kitchen extension and the new rear extension which replaces an out-building. The structure occupies the full width of the site and extends as far as the rear laneway with a new door and window inserted into the rear facade.

## 2.0 Proposed Development

- 2.1.1. The proposed development seeks permission to **retain alterations and extensions** to the dwelling house which may be summarised as follows:
- Demolish front porch and install new window and restore front façade.
  - Replace the mono-pitched roof on the rear kitchen extension with a flat roof and build up the walls to meet the roof. Dryline the internal walls and block up the existing window opening on the northern elevation.
  - Replace roof of out-building with a flat roof and build up walls to meet roof. Replace rear wall (to lane) with a new wall with a new window opening and a door opening onto the laneway. Convert use of outbuilding to a new bedroom with wet room (ensuite) and utility room. The outbuilding had previously been in use as a utility area with an oil tank and a door leading onto the laneway.

- Construct new extension (c. 2.75m<sup>2</sup>) to facilitate internal link corridor between main house and outbuilding. This necessitates increasing the height of this section of the northern boundary wall from c.1.9m to c.2.4m and reducing the yard area from c.9m<sup>2</sup> to c.6m<sup>2</sup>.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission for retention of the works carried out to the dwelling subject to 3 conditions including:

**Condition 2:** Surface water to be collected and disposed of on site and shall not be allowed to flow onto the public road or adjoining properties.

**Condition 3:** No part of the dwelling to encroach onto or overhang onto the adjoining properties.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's report noted that the site is a mid-terrace dwelling in an established, mature housing development. It was noted that an extension has been built which incorporates the shed at the back of the garden, as well as the older extension and that the two areas have been linked by a corridor extension. The internal courtyard area was considered to provide some amenity space between the living area and the new bedroom. It was noted that the extensions have flat roofs and that there are no windows overlooking the gardens of adjoining properties. It was stated that as the extensions are single storey with flat roofs, they do not impose onto the adjoining rear gardens and do not overhang these gardens.

A **grant of permission** subject to conditions was recommended.

### 3.3. Other Technical Reports

- 3.3.1. None received.

### 3.4. Prescribed Bodies

3.4.1. None received.

### 3.5. Third Party Observations

One objection received by the planning authority from the appellant (31 O’Kelly’s Villas). This submission is on file for the Board’s information. The issues raised are comparable to those set out in the 3<sup>rd</sup> Party appeal received and summarised in section 6 below. The concerns raised related to the following issues

- Unauthorised development - No planning permission granted for original extension (kitchen and utility) or for concrete shed at rear. Nor has any planning permission been granted for the recent works carried out at the property. No permission has been granted for a change of use.
- Scale of development – there is no garden left and the extension extends the full length of the common boundary. The combined development of existing and proposed is enormous.
- Concern regarding proximity to boundary and overhanging vents and eaves, as well as gutters and pipes. The food vents have been put on the wall facing the neighbouring garden.
- Overshadowing – the appellant’s kitchen window and rear garden are overshadowed by the high walls. As these are small terraced houses this is of significance as the lights must be turned on in the middle of the day.
- Description of development inaccurate – proposal is not for retention of an old building but a completely new extension.
- Concern regarding access to the appellants’ property.
- Hinder future development potential, particularly in light of the “two-metre rule”.

### 4.0 Planning History

4.1.1. None on the site.

## 5.0 Policy Context

### 5.1. National Planning Framework 2018

The NPF seeks to focus growth in cities, towns and villages with an overall aim of achieving higher densities than have been achieved to date.

**NP Objective 35** seeks to increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of old buildings, infill development schemes, area or site-based regeneration and increased heights.

### 5.2. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

In order for small towns and villages to thrive and succeed, it is stated that their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. New development should contribute to compact towns and villages. The scale should be in proportion to the pattern and grain of existing development.

### 5.3. Kerry County Development Plan 2014

**Chapter 3 – Housing** – sets out the housing policies and objectives including the following:

**US-3** – Ensure that all new development within the County supports the achievement of sustainable residential communities. The Council will have regard to the provisions of the ‘Sustainable Residential Development in Urban Areas’ Guidelines 2009 (DoEHLG) and the accompanying Urban Design Manual.

**US-7** – Ensure that all new urban development is of a high design quality and supports the achievement of successful urban spaces and sustainable communities.

**Chapter 13 – Development Management Standards** includes the following:-

**Infill Sites** – Infill development must have regard to the main adjoining existing uses, design features, building lines and heights, as well as the existence of any features such as trees, built and natural heritage and open spaces on the site or on adjoining

sites. Proposals for infill development must demonstrate how they will integrate satisfactorily with the adjoining developments, without any loss of amenity.

**Building lines and private open space** – A minimum of 22 metres shall generally be provided between directly opposing first floor habitable rooms. This may be reduced subject to good design and the individual design requirements of the site where it can be demonstrated that residential amenity and adequate light is not compromised.

#### 5.4. **Killarney Town Development Plan 2009 – 2015 (as extended)**

Killarney Town Development Plan was extended by Variation 4, which was adopted in December 2018. This Variation replaces the zoning maps and many of the other maps of the original Development Plan. It also includes the population allocation and housing land requirement as contained in the Core Strategy of the Kerry County Development Plan 2014. It also addresses the Killarney Municipal District LAP 2018-2024, which was adopted at the same time, and several other planning issues.

The site is shown on the New Killarney Zoning Map A (Variation 4) as being located in an area zoned as 'Existing Residential' (R2).

The objective for Existing/Developed/Residential Areas is to protect and improve these areas and to provide facilities and amenities incidental to those areas.

**Development management standards** - Dwellings shall be provided with a minimum private amenity space of 48m<sup>2</sup> in the Town Centre and 75m<sup>2</sup> in green field sites. A minimum garden depth of 11m should be provided but exceptions may be made for residential units proposed for elderly persons or persons with a disability/special requirements. Site coverage and plot ratio (12.9) requires 50% site coverage for residential areas and a plot ratio of 0.5-1.0 in areas other than town centres and outer green field sites. Infill development is required to maintain the established building lines, roof lines and proportions of existing development (12.26). Extensions to dwellings must follow the pattern of the existing house (12.41.1) and granny flats must be capable of full integration with the main house and be capable of re-integration with the main house, with the entrance being through the main house (12.41.2). Boundary treatments should be in the form of screen walls which should be 2m (in height) along the side boundaries (12.32).

## 5.5. Natural Heritage Designations

Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038) are located approx. 600m to the north, west and south.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A Third-Party Appeal has been received from the owners of the properties to the immediate north of the site (No. 31 O’Kelly’s Villas). The submission can be summarised as follows:

- **Unauthorised development** – the large-scale extension was constructed in the mature family residential area without planning permission and is totally out of proportion with the original house and gardens and that of the neighbouring dwellings. The description of the retention permission is false and inaccurate. Surely any extension over 40sq.m must require permission, including the older extension?
- **Change of use** – no permission has been sought or granted for the change of use of the concrete shed to a bedroom and bathroom.
- **Established pattern of development** – these homes have shared common boundary walls and were mirror images of each other in the front and back. The uniformity of the boundary walls and garden depths creates a sense of unity in terms of the residential character of the street. However, the new extension has been built using the boundary wall as part of the extension, which is contrary to the established pattern of development. Surely this would breach the “2-metre rule” which states that no development can take place within 2 metres of the adjoining property? It would also create a precedent and if every property was developed in a similar manner, it would result in extreme overdevelopment.
- **Overdevelopment** – there was a small kitchen and utility extension which opened onto the back garden with a concrete shed at the end of the garden.

The current proposal to be retained comprises a new-build extension which extends the full length of the garden, incorporating both the old extension and the concrete shed and the garden in between. There is no garden left. Presumably, there is a need to retain a certain amount of private amenity space, e.g. 25m<sup>2</sup> at a private dwelling.

- **Overshadowing** – Natural light to the appellant’s property will be reduced due to the scale and height of the proposed extension. The structure completely overshadows the kitchen and rear garden of the adjoining property.
- **Loss of Outlook** – the boundary wall is no longer a garden wall but a structural elevation of at least 40 foot in length. The obtrusive nature of the structure can be seen in the attached photos.
- **Proximity and encroachment** – the proposed development would result in a structure which is excessive in terms of height and scale relative to the established pattern of development. It will encroach on the adjoining garden and hinder any future development potential as there is no setback from the boundary. The applicant has fitted vents on the wall which are only 4 feet from the back door of the adjoining property and any future development by the appellants would block these vents. It would also negatively affect the property value of the adjoining site.
- **Integrity of the planning system** – the planning authority has failed to bring the unauthorised development at No. 30 under control and the integrity of the planning system depends on the necessary enforcement action being taken against those who flout the law.

## 6.2. Response from first party

A response to the grounds of appeal was received from the first party on 27<sup>th</sup> March 2020. The main substance of the response was in the form of a rebuttal of the grounds of appeal. The following points of note were made:

**Background** – the applicant grew up in the property and purchased it from his late mother’s estate. The applicant’s wife is undergoing cancer treatment and requires



the ground floor bedroom with wheelchair accessible wet room and wc for ease of movement.

**Need for the extension** – the need for the extension is justified by the small scale of the original dwelling (c.50m<sup>2</sup>) and the need to modernise and bring the properties up to an energy efficient standard. It incorporates the existing structures that had existed on the site for many years with just the addition of a small link corridor. Aerial photographs have been provided to demonstrate that the shed and rear extension had existed since c.1995.

**Nature and use of the extension** - The proposed incorporation of the structure at the rear can be considered to comprise works which facilitate the creation of a small 'granny flat'. This will not be subdivided and is attached to the rear of the dwelling and it is physically integrated into the existing dwelling. A condition could be attached prohibiting the separate sale of the family flat.

**Policy framework supports housing which is adaptable** - National policy supports flexibility in dwellings so that they can meet the changing needs of occupants (NPF, Sustainable Residential Development in Urban Areas Guidelines), Quality Housing for Sustainable Communities, Rebuilding Ireland's Action Plan for Housing and Homelessness. The Regional Spatial Strategy for the Southern Region and Kerry County Development Plan also supports the adaptation of houses to meet the changing needs of the population as they grow older or for people with a disability and also for retrofitting of the existing building stock to improve energy efficiency. The site is zoned Existing Residential in the Killarney Municipal LAP which is suitable for residential development.

**Loss of light** - overshadowing will not be substantially increased compared with the development that had existed along this boundary since the late 1990s. The works to be retained are single storey in height, thereby limiting any overshadowing. It does not differ materially in footprint or in height from the existing structure. The Sustainable Residential Development in Urban Areas Guidance states that overshadowing will only cause problems where buildings of a significant height are involved or where new buildings are located very close to adjoining buildings".

**Loss of privacy** - There is no overlooking and the extension is contained within the site boundaries. The provision of a skylight over the kitchen dining room together

with patio doors to the internal courtyard will provide adequate daylight into the extension to be retained, without any overlooking.

**Private open space** – The CDP does not specify maximum plot ratios at this location. The total area of private open space provided is 21.9m<sup>2</sup>, which represents 21.6% of the site area. The removal of the front porch extension will increase the front garden area to 16m<sup>2</sup>. The proposed corridor extension reduces the private amenity space at the rear to c.5.9m<sup>2</sup>.

**Garden wall on property boundary** – the GF single storey extension to be retained is c.3.2m in height. A window which had previously opened out onto the appellant's garden was removed.

**Encroachment** – the developer has a legal entitlement to carry out works within his own property and the works, comprising dry lining of the walls were carried out entirely within the applicant's boundary. The applicant must ascertain that he has all necessary rights to carry out any development on lands.

### 6.3. Planning Authority Response

The P.A. responded to the grounds of appeal on the 30<sup>th</sup> March 2020. The points made may be summarised as follows :

1. **Unauthorised nature of development** – the legislation allows for retention of such development and the planning application had sought to address this matter.
2. **Setback of 2 metres** – there is no restriction that would prohibit development along boundary walls, which is common-place in tight urban situations. A dispute between parties along boundaries is a civil issue and not a consideration for a planning authority.
3. **Encroachment** – the development does not appear to encroach or overhang the adjoining properties and would not impact on the future development of the appellant's property.

## 7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

- Principle of development
- Residential amenity
- Visual amenity
- Encroachment
- Environmental Impact Assessment
- Appropriate Assessment

### 7.1. Principle of development

- 7.1.1. The site is located in an established residential area which comprises a densely developed housing estate of small terraced houses on narrow plots. There is a strong sense of uniformity within the estate which arises from the design of the terraced houses, the use of materials, uniform setbacks and plot sizes and boundary walls/treatments. The rear gardens (as originally planned) are small being c.50m<sup>2</sup> with a narrow width of 4.5m. Although many houses have been extended at the rear, the majority of these extensions are relatively shallow and single-storey, with at least two having 2-storey extensions. Several gardens have outbuildings adjoining the rear lane, but they appear to be concrete sheds rather than habitable rooms.
- 7.1.2. Prior to the recent works for which permission for retention is the subject of the current application, the appeal site seems to have had the most extensive level of additional development in the terrace to the north and south of the site. The kitchen extension projected beyond the rear building lines to the north and south and the outbuilding was larger and deeper than any of the other outbuildings in the terrace. The appeal site also had a front porch extension, which has been demolished. However, the kitchen extension had a low, shallow mono-pitched roof and the concrete shed had a similar roof profile.
- 7.1.3. The development proposed to be retained would result in a site coverage of 78.4% and a plot ratio of 1.06. It would result in a continuous concrete wall of 3.2m in height along the entire side boundary with No. 31, behind the building line. It would fail to respect the building lines, roof lines and scale of the existing development and would

be excessive in height and scale relative to the established pattern of development within the terrace. It is considered that the proposed development would constitute overdevelopment of the site and would fail to have regard to the development management standards contained in the current Killarney Town Development Plan.

- 7.1.4. The appellant has objected to the unauthorised nature of the development and to the fact that the description of development is not reflective of the development as proposed to be retained. It is considered that the proposed development seeks to regularise the unauthorised works, which is reasonable. I would accept, however, that the description of development is inaccurate as the development to be retained consists of the partial (or almost complete) demolition of the rear extension and the rear outbuilding and the construction of a much larger extension which incorporates the footprint and side boundary walls of the original buildings. Furthermore, the response to the grounds of appeal acknowledges that the room at the rear is to be used as a granny flat/family flat unit. However, this was not specified in the description of development.
- 7.1.5. I would accept, however, that the stated purpose of the bedroom with wet room is to facilitate the applicant's wife who is receiving palliative care for cancer. Although the extension would be physically linked to the main dwelling via the rear extension and the link extension, a granny flat must be capable of full integration with and be capable of re-integration with the main house, with the entrance to the unit being through the main house (KTDP 12.41.2). The unit is quite removed from the main house and it has an external door which opens directly onto the rear lane. It also reduces the private amenity space on the site to c.6m<sup>2</sup>. Should the unit no longer be required as a family unit, the structure itself would remain on the site.
- 7.1.6. The applicant's genuine personal circumstances and need for an accessible ground floor room are fully acknowledged and the Board would have sympathy for the individual needs of the family at this difficult time. However, the structure that currently stands on the site is a permanent one which is likely to stay in place for many years to come. It is considered that the development, as proposed to be retained, would result in overdevelopment of this restricted site, with significant consequences for the amenities of the adjoining neighbouring site and which would create a precedent that would make it difficult for the planning authority to refuse similar development proposals in the future.

## 7.2. Residential amenity

- 7.2.1. **Private amenity space** - The Killarney Town Development Plan requires the provision of 48m<sup>2</sup> of private amenity space in town centre sites (and 75m<sup>2</sup> in outer greenfield sites), and 11m depth for rear gardens. The proposed development would reduce an already restricted private amenity space from c.9m<sup>2</sup> to c.6m<sup>2</sup>. It is considered that this would result in an unacceptable level of private amenity space to serve the dwelling house and would necessitate the storage of bins in either the front garden or on the rear lane (outside the site boundary).
- 7.2.2. **Overlooking** - The first party has stated that the proposed development would remove a window which had previously opened onto the appellant's rear garden in the side wall. The rear extension to the kitchen has been provided with a rooflight instead. Thus, the design of the proposed building would mitigate any previous loss of privacy and would not give rise to any overlooking of the appellant's property.
- 7.2.3. **Overshadowing** – The appellant's garden is small and narrow with an estimated area of 50m<sup>2</sup> and a width of 4.5m. It is east-facing and the appeal site is located to the south/southwest. Given that the buildings to be retained are located along the southern boundary and extend the full length of that boundary, at an increased height of 3.2m, it is considered that the development proposed to be retained would result in a significant degree of overshadowing of the appellant's rear garden. It is also considered that the rear windows of the single-storey extension of the appellant's house would be overshadowed, particularly in the mornings.
- 7.2.4. I observed a shadow on the lawn of No. 31 during my site inspection, which was at around lunchtime. It is acknowledged that the buildings that were previously on the site would also have cast a shadow and resulted in loss of daylight and sunlight. However, there was a gap in the wall between the extension and the shed and the roof of the previous extension sloped down towards this gap. It can be seen from the line of the new plasterwork that the wall of the extension is significantly higher than it was before and is substantially higher than would be expected of a garden boundary wall. It is considered that this loss of daylight and sun light would adversely affect the residential amenities of this adjoining property.
- 7.2.5. **Loss of outlook** – the development to be retained would result in a continuous wall at a height of 3.2m along the side boundary of the appellant's garden. It is

considered that the unrelieved nature of the wall, together with its scale and the narrow width of the appellant's garden, makes it an oppressive and dominant feature which would reduce the quality of the outlook from the rear windows and the garden. It is considered that this would seriously injure the residential amenities of the adjoining property.

### **7.3. Visual amenity**

- 7.3.1. The removal of the front porch and restoration of the front façade is to be welcomed. It is acknowledged that the new window does not fit in with the fenestration pattern prevalent in the terrace, but it is considered that the altered window design and shape of opening can be absorbed without any detriment to the visual amenities of the area.
- 7.3.2. The rear extension backing onto the lane alters the character of the lane, which has until now comprised of rear garden walls, fences and sheds. It is quite utilitarian in character with a degree of informality. It is considered that the proposed extension with its window and door opening directly onto the lane and its habitable use introduces a degree of formality and surveillance to the lane. The scale of the extension is also evident from the side lane as it is clearly visible over the garden walls to the south. It is considered that the rear extension, which replaces a smaller extension and an outbuilding, by reason of its excessive scale results in an obtrusive feature which alters the character of the rear lanes and injures the visual amenity of the area in the vicinity of the site.

### **7.4. Encroachment**

- 7.4.1. The appellant has raised concerns regarding encroachment of the extension with overhanging eaves and vents placed in the party wall. It is unclear whether there is any degree of encroachment, which would be a civil matter in any case. However, any vents which are placed on the party wall and which would expel air directly into the appellant's garden would be likely to result in odour and possibly noise nuisance. It is considered, therefore, that should the Board be minded to grant permission, these vents should be required to be relocated.

## 7.5. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development within the development boundary of Killarney town on serviced lands, 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.

## 7.6. Appropriate Assessment

- 7.6.1. The site is located within 600m of two European sites, Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038). There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on brownfield and serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## 8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be **refused** for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. Having regard to the restricted nature of the site and to the design, excessive scale, height and depth of projection of the rear extensions that are proposed to be retained, it is considered that the proposed development would result in an overly dominant and visually obtrusive feature which would be out of character with the established pattern of development in the area and would provide for an inadequate amount of private amenity space for the occupants of the dwelling, which would be injurious to the residential amenities of that property. The proposed development would, therefore, conflict with the policies and objectives for domestic extensions as set out in the Killarney Town Development Plan 2009-2015, (as extended and varied), and would not

be in accordance with the proper planning and sustainable development of the area.

2. Having regard to the narrow width and small size of the adjoining garden to the north and to the continuous length and height of the extensions that are proposed to be retained along the common boundary, it is considered that the development would result in overdevelopment of the site which would give rise to an unacceptable degree of overshadowing and loss of outlook and would seriously injure the residential amenities of the adjoining property. The proposed development would not, therefore, be in accordance with the proper planning and sustainable development of the area.

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**Mary Kennelly**  
**Senior Planning Inspector**

**14<sup>th</sup> May, 2020**