



An
Bord
Pleanála

Inspector's Report ABP-309735-21

Development	House
Location	Spraymount Road, Ballybunnion, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/1258
Applicant(s)	Sarah Quille
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Sheila Kelly Aidan Kinsella
Observer	Peter Brockett
Date of Site Inspection	14 th July, 2021
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The 0.05 hectare site is located on Spraymount Road to the north of the town centre of Ballybunnion in County Kerry. It consists of an infill plot between two gable fronted-detached bungalows located on the north side of the road. Existing boundary treatment consists of flanking low block walls and post and rail fencing along the frontage and to the rear of the site. An undeveloped plot to the rear of the site separates it from detached two-storey houses. Spraymount Road is a one-way street running east-west. There is on-street parking along the south side of the road.

2.0 Proposed Development

2.1. The proposed development comprises the construction of a detached single-storey house with a stated floor area of 161 square metres. The house would include a partial mezzanine / above ground floor level. It would be served by mains water supply and public foul sewer. Details submitted with the application included an Architect's Report.

3.0 Planning Authority Decision

3.1. Decision

On 24th February, 2021, Kerry County Council decided to grant permission for the proposed development subject to nine conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, development plan provisions, Irish Water's report, and third party submissions. It was considered that the principle of residential development on the site was acceptable, the house design was appropriate for the infill site and would not be out of keeping with the houses on the road. Windows on the gables of the house were considered to impact on residential amenity and it was submitted that a condition would be included requiring their removal. It was noted that distances of over 1.7m were provided between the house

and boundary walls and it was considered that the windows at ground floor level to the sides of the house would not impact significantly on adjoining properties, having regard to the number of windows to the sides of the existing houses facing onto the site. A grant of permission was recommended subject to conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

3.4. Third Party Observations

Third Party submissions were made to the planning authority by Sheila Kelly and Aidan Kinsella. The grounds of the appeals reflect the principal concerns raised. A further submission was received from N. Leahy and raised concerns relating to impacts on privacy, the siting of a grill, and overshadowing. The applicant made a submission to the planning authority in response to third party submissions.

4.0 Planning History

P.A. 19/34

Permission was granted for the construction of a single-storey house.

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

Development Management – Standards & Guidelines

Infill Sites

The Plan notes that infill development is development on unoccupied/underutilised land that is generally located between two developed sites.

The Plan requires infill development to 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 are required to demonstrate how they will integrate satisfactorily with the adjoining developments, without any loss of amenity.

5.2. Listowel Municipal District Local Area Plan 2020-2026

Ballybunion LAP

The site is located within the development boundary for Ballybunion. It is in an area zoned R2 – Existing Residential.

General Objectives

These include:

BN-GO-08 Encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites

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. The submission of an EIAR is not required.

6.0 The Appeals

6.1. Grounds of Appeal from Sheila Kelly

The appellant resides to the west of the site. The grounds of the appeal may be synthesised as follows:

- The application description was misleading as there is a second floor on the drawings submitted and not a mezzanine floor.
- There was no discussion with the applicant on her proposal.

- The proposal is contrary to Kerry County Development Plan provisions relating to infill sites because it is not sympathetic to the existing streetscape and because of the loss of amenity to her property. All existing dwellings run perpendicular to the road.
- The dwelling will overshadow the appellant's property and the property to the east.
- Due regard was not given to the proposed building height, size of plot, distance to boundaries, existing streetscape, ridgelines, bulk, massing, negative impact on adjoining properties, and the 25 degree rule when the application was assessed by the planning authority.
- The proposed first floor bedroom windows would result in a total invasion of privacy being 5m from the appellant's bedroom windows.
- The Planning Officer's report did not have due regard to the provisions of Kerry County Development Plan, notably in relation to infill sites, design / finishes, and "Quality Housing for Sustainable Communities – Design Guidelines (2007)".
- Given the height and close proximity of the proposed house, it clearly compromises the appellant's right to light, casting a shadow over her property and reducing daylight.

6.2. Grounds of Appeal from Aidan Kinsella

The appellant resides to the east of the site. The grounds of the appeal may be synthesised as follows:

- The appellant is in favour of the site being developed in sympathy with the current style of development on the road.
- The applicant's architect made no attempt to make contact with the appellant during the course of the application.
- The Planner did not give due consideration to the appellant's complaint that it was an invalid application given its description. It is a two-storey dwelling.

- The existing style of houses on the road is the vernacular style of the area and should be adhered to where possible.
- The proposal does not permit cars to be able to turn within the curtilage of the site. The road is busy at times and the ability to reverse safely onto a busy road is significantly reduced.
- The Planner did not have due regard to the County Development Plan's Development Management Standards & Guidelines and "Quality Housing for Sustainable Communities – Design Guidelines (2007)". Reference is made to Plan provisions relating to infill development and design/finishes and to sections of the Design Guidelines. The Planner did not adequately consider the height, scale, mass and orientation of the proposal. Reference is made to inconsistency with established building heights, the lack of a need for a second floor to accommodate a plant room, a disproportionate scale and mass, overshadowing and lack of shadow analysis, and lack of justification for the roof's east-west orientation.
- An alternative proposal with a floor area similar to that proposed and of a design in keeping with the vernacular style at this location could be provided.
- The following design guidelines should be considered – roof oriented perpendicular to Spraymount Road, a gutter height and roof height in keeping with current style, and inclusion of a mezzanine/second floor subject to a shadow analysis.

6.3. Applicant Response

The response to the appeal from Sheila Kelly may be synthesised as follows:

- The application is not misleading. Definitions of "mezzanine" and "dormer" are provided.
- Engagement with neighbours is reaffirmed in the response.
- The proposal integrates satisfactorily and, with regard to infill sites provisions of the County Development Plan, the design is satisfactory in terms of use,

design features, building line, height and finishes. It is noted that four houses on Spraymount Road have ridges parallel to the road.

- A daylight study is attached. The proposal does not create any situation that does not already exist on site. Regarding daylight, the property to the west is minimally affected by the proposal.
- Regarding sunlight, the proposal does not adversely affect the existing dwelling to the west.
- Regarding privacy, the neighbour's windows are positioned higher than the applicant's proposal. Therefore, the issue occurs on the applicant's side of the boundary rather than the appellant's. The finished floor level of both houses flanking the site is more than 300mm higher than the proposal. A 2m high wall is proposed along the east and west site boundaries and will make overlooking from the applicant's side impossible. The wall will be lowered at the front so that it does not impeded visibility sightlines.

Further to the above in response to Aidan Kinsella's appeal, it is submitted:

- The trend of roof ridges perpendicular to the road is highly unusual in the town and are atypical. Their designs have resulted in direct overlooking of habitable and recreational spaces.
- The applicant will not be reversing onto the public road but will be reversing into her drive. 99% of the time Spraymount Road is a very quiet one-way system road. Notwithstanding this, there is enough space to the front to accommodate a turning point if the applicant wishes.
- The house has been designed with regard to the appellant's property in terms of living room annex positioning, lack of gable windows facing the appellant's property, provision of separation distance from the site boundary, and painting of the building.
- Reference is made to Guidelines for Planning Authorities in relation to Design Standards for New Apartments, notably with regard to floor to floor heights, and to the needs at the mezzanine level, and height to eaves.

- The main roof is sloping and will not be noticed in the way shown on the drawings and the living room annex will be more prominent and noticeable because it is positioned closer to the footpath, with the main roof recessed 6m beyond the building line.
- Regarding daylight, the Vertical Sky Components (VSC) are above the precedented minimum.
- Regarding sunlight, the proposal does not adversely affect the appellant's dwelling based on BRE 209(3.2.2). The appellant extended his property to the rear, installing three additional windows in the west wall and the wall is positioned closer than one metre from the boundary. Only a bathroom window is proposed in the wall facing. The existing need in the appellant's house for artificial light points to an issue in relation to either room layout, window design or house orientation.
- In terms of solar gain, there is valid argument for a pitched roof to be designed facing south where there is no overshadowing of solar panels by neighbouring properties.
- The applicant foresees certain issues with the appellant's alternative design.
- The proposal is in accordance with the new Local Area Plan for Ballybunion.

Details submitted with the response include a letter of support from Peter Brockett and a daylight analysis.

6.4. Planning Authority Response

I have no record of any response to the appeals from the planning authority.

6.5. Observations

An observation from Peter Brockett, a previous owner of the site, supports the application and refers to the energy efficiency provisions being made in the design, the need for utility space, the applicant's connections to the area, and the proposal comprising a permanent residence.

6.6. Further Responses

The response by Sheila Kelly to the applicant's response to her appeal reiterated her original concerns about impact on residential amenity, considered the supporting submission from Peter Brockett to constitute a conflict of interest, and she supported the appeal from Aidan Kinsella.

The response by Aidan Kinsella to the applicant's response to his appeal refuted the submission from Peter Brockett, while the concerns relating to the floors contained within the proposed house, non-compliance with plan and guideline provisions, impact on residential amenity, and incompatibility with house design on the road were reiterated.

The observer supported the applicant's response.

7.0 Assessment

- 7.1. The proposed development would be sited on lands zoned for residential use in the Ballybunion Local Area Plan. Objective BN-GO-08 of the Plan seeks to encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites. This is a site on which permission was recently granted for a house under P.A. Ref. 19/34. The principle of residential development on this site is accepted.
- 7.2. The site of the proposed development is flanked by two existing detached houses. The site is clearly an infill site. The provisions of Kerry County Development Plan relating to infill sites are required to be given consideration when assessing this proposal.
- 7.3. The context for the proposed development is critical to any planning assessment of this proposal. It is first understood that the appellants' houses, i.e. the two houses flanking the site, have been built and developed in a manner which significantly overlooks the site, each having numerous windows facing the appeal site. The undermining of the developability of the site arises from a very significant intrusion on this site caused by these established houses. This is an issue which can reasonably be rectified by the applicant by the construction of flank boundary walls in

the manner proposed, i.e. two metre high block walls along both boundaries. This would eradicate the undesirable overlooking of the site and ensure that a house developed on this site can maintain some reasonable degree of privacy by eliminating overlooking from the existing houses.

- 7.4. It is reasonable to determine that the proposed house has been designed to eliminate overlooking of the neighbouring properties. The omission of any gable windows above ground level would eliminate potential overlooking at that level. The provision of the flank boundary walls would ensure that there would be no overlooking from gable windows at ground floor level. Indeed, I submit to the Board that a gable-fronted house on the appeal site would likely cause more significant concerns relating to overlooking of neighbouring houses due to the necessity that would result from the provision of windows to main habitable rooms on the side elevations of such a house.
- 7.5. The house is appropriately sited, respecting the established building line. The proposed development is laid out in a manner which would provide clear circulation space around the building, creating distinct separation between the building and its flank boundaries. The closer proximity of the existing house to the east is noted and it is evident that the proposed development makes for significantly greater separation distance between its gable elevation and the flank boundary.
- 7.6. The site constitutes an infill site, flanked by houses to the east and west. The height of the proposed house would be marginally higher than the house to the east. Given the orientation of the houses at this location, one can reasonably estimate that the proposed development would not have significant impact on these houses by way of overshadowing, with any potential effects being early in the morning for the house to the west and late in the evening for the house to the east. One again must introduce some degree of balance when considering such a proposal where any such impact would arise. This is an infill site where the established flanking properties have been developed in a manner which significantly impacts on the developability of the infill site. The potential overshadowing impact would not be significant with this understanding.
- 7.7. I note the appellants' submissions on impacts on sunlight and daylight for their properties. I further note and accept the applicant's response to this issue. I

respectfully submit that the reasonable development of flank boundary walls to protect the privacy of the applicant's property would constitute the likely tangible impact on sunlight and daylight to the established houses. I note how close the established houses are sited in close proximity to the boundaries of the site and how they have been designed with numerous windows facing the site. The applicant proposes a reasonable layout of the structure on this site, maintaining reasonable separation distances from flank boundaries and significantly minimising the number of windows on the building's side elevations. One must take a balanced perspective on such a proposal, which seeks to develop a house on a site which is significantly impacted by other established properties. Potential impacts from the proposed house would be negligible when compared to the potential effects arising from the reasonable provision of the flank boundary walls. One cannot ignore the practical reality of the site constituting an infill site and the provisions by the applicant to reasonably address the concerns of neighbouring residents, while seeking to maintain and protect a suitable degree of privacy.

7.8. With regard to the development being out of character with the area in which it would be located, I acknowledge the number of gable fronted houses on Spraymount Road. However, to suggest this sets the design brief for housing in this location would have to reasonably be viewed as misplaced. There is a mix of house types and building heights on this street and it is notable also that there is a mix of flank boundary wall/fence types and heights between established properties. The difficulties arising for the developability of this site arises from the pattern of development flanking the site. In this urban location, a short distance from the town centre, and where in the locality there is a wide variety of house types, heights, designs, layouts, etc., a development of the nature and scale proposed must reasonably be considered acceptable. The form, scale and character of the proposed house, in this town location with its mix of house types and designs, cannot be seen to be out of character.

7.9. Further to the issue of height and design, I note the appellants have raised concerns about the description of the development and, in particular, the use of the term "mezzanine". I further note the applicant's response to this. It is evident that the public notices informed the public of the nature and extent of the proposed development. It is also clear that the appellants had a true understanding of the

nature and extent of the proposed development and that they engaged with the planning authority in making submissions and with the Board by way of appeals. The appellants' opportunities to engage in the application and appeal processes were not undermined.

- 7.10. I note the Development Management Standards and Guidelines of Kerry County Development Plan as they relate to 'Infill Sites'. The proposed development has very clearly had due regard to the adjoining existing uses, namely the adjoining houses, when regard is had to separation distances from boundaries, designing out overlooking by the provision of flank boundary walls and limiting gable windows, and maintaining a reasonable building height, building line and footprint on the site. The proposal has been designed to integrate with adjoining development and to reduce potential loss of amenity. This proposed development is not in conflict with the standards and guidelines of the Development Plan as it relates to infill sites, provision of private amenity space, etc..
- 7.11. Finally, with regard to the issue of traffic safety, I note this is an infill site on which permission was previously granted for a house. The house fronts onto a quiet road close to the town centre. It would have a building line in keeping with flanking properties. The curtilage of the site can adequately accommodate a turning area without the necessity for cars reversing out onto the street. There could not reasonably be an objection to this proposal on traffic safety grounds.

Appropriate Assessment

The site of the proposed development is located within the serviceable urban area of Ballybunion where there is extensive residential development. This is a location which is separated from the Lower River Shannon SAC (Site Code: 002165) by roads, residential and other properties. Having regard to the nature, scale, and location of the proposed development, the serviced nature of the development, the nature of the receiving environment, and the separation distance to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the

proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the residential zoning provisions for the site, the planning history of the site, to the pattern of established development in the area, to the design of the proposed development, and to the serviceable nature, scale and layout of the proposal, it is considered that the proposed development, subject to the conditions set out below, would not adversely impact on the residential amenities of area, would be acceptable in terms of traffic safety, and would otherwise be in accordance with the orderly development of the town of Ballybunion. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed dwelling shall be occupied as a place of permanent residence and shall not be used as holiday home development without the prior grant of planning permission.

Reason: In the interest of providing for local permanent housing need within the town.

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

Reason: In the interest of visual amenity.

3. The proposed gable windows at first floor level shall be omitted.

Reason: In the interest of residential amenity.

4. (a) Screen walls shall be provided along the side boundaries of the site. Such walls shall be two metres in height above ground level.

(b) Details of the layout, the materials, and external finishes of the screen walls shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

Reason: In the interest of residential and visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

7. All service cables associated with the proposed development shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenity of the area.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, 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.

Kevin Moore
Senior Planning Inspector

15th July 2021