



An
Bord
Pleanála

Inspector's Report

ABP-309977-21

Development	Retention of structure on site for use as a holiday home.
Location	Doon West, Ballybunion, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	201045
Applicant(s)	Mike & Deirdre Mulvihill.
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant(s)	Stephen Mulvihill.
Observer(s)	Don & Breda Toomey Josephine Mulvihill.
Date of Site Inspection	21 st June 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a site of .01 hectares located on a cul de sac laneway serving the rear of buildings which front onto Doon Road R551 in the northern part of Ballybunion in Co Kerry. The immediate area is predominantly residential in terms of use and characterised by single storey properties in the main with the local St Joseph's primary and St Joseph's secondary school located a short distance to the north. The appeal site is occupied by a single storey L shaped structure mid construction. The building has a flat roof with windows to all four elevations. The adjoining sites to the north and south are occupied by single storey sheds within the rear gardens of dwellings fronting onto Doon Road. Adjoining to the east is a single storey dwelling which is located at a lower ground level. Application details indicate that the appeal site was formerly occupied by a chalet type structure which had fallen into a significant state of disrepair and lay derelict for some time.

2.0 Proposed Development

2.1. The application as initially submitted was noted to involve permission to "retain and complete their house". During the course of the application to the council and in response to a request for additional information the description was revised to "Permission to retain and complete the structure on site for use as a holiday home" The structure extends to a floor area of 69 sq.m. and is constructed immediately adjacent to the southern and western site boundary with windows provided on all four elevations. Proposed floor layout indicates that internally it is proposed to provide a kitchen living room and three bedrooms. In response to the request for additional information the first party proposed to remove the two windows to the southern elevation.

3.0 Planning Authority Decision

3.1. Decision

By order dated 1st April 2021 Kerry county Council issued notification of the decision to grant permission and 9 conditions were attached which include the following

Condition 2. Development Contribution €2,250 in accordance with a development contribution scheme.

Condition 3(a) Proposed holiday home shall be in accordance with the design drawing received on 24/02/2021 except for the following modifications:

- (i) Windows to south elevation shall be removed and window on the east elevation shall be fitted with obscure glass all within 3 months of receipt of this decision, at which time the applicant/developer shall submit a certificate of compliance prepared by a suitably qualified person with professional indemnity insurance stating that these conditions have been complied with. Photographic evidence shall also be submitted.
- (b) All external finishes shall be neutral in colour, tone and texture.

Condition 7. No water from the proposed development shall be allowed to flow onto the adjoining road surface to the west.

No vehicle associated with the development are permitted to park on the adjoining laneway to the west

Reason: In the interest of traffic safety.

Condition 8. The proposed development works shall not cause damage to interfere with nor infringe upon adjoining properties.

Condition 9. The dwelling house on site shall only be used as a second home/holiday home as described in submission received from the applicants on 22/03/3032 and shall not for¹ used for short-term letting purposes.

¹ Assumed to be a typo -should read "shall not be used"

Reason: In the interest of orderly development and to protect the amenities of residential properties in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report noted that the drawings submitted are not accurate and do not reflect the as constructed building. Concerns arise regarding negative impact on adjacent residential amenity. Further information requested to included

- Accurate drawings to reflect the as built situation.
- Shadow impact assessment.
- Response to third party submission.
- Car parking and private amenity space provision.
- Applicant was advised to consider the use of the dwelling as a holiday home instead of a full-time residence having regard to the density of development on site.
- Noting submission on history file regarding right of way through the site serving the property to the east applicant to address this issue.

Final Planning report recommends permission subject to conditions consistent with the subsequent decision.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

Submission from Don and Brenda Toomey. Doon Road. Welcome the redevelopment of the site which was previously occupied by a holiday chalet which

had been abandoned and in a state of dereliction for over 35 years and was considered a health risk and fire hazard. Concerns arise however that submitted drawings are misleading. Building is immediately adjacent to and touching the observer's boundary wall where the former chalet was set back at least 1m. Concern regarding water run-off and maintenance. Ground levels difference provides that boundary wall is now acting as a retaining wall which it is not structurally designed to do. Windows not opaque. Noise emitting fixtures and fittings should be located away from adjacent dwellings. Due care and consideration should be given to established residents.

Submission from Bridie Mulvihill, Sunbeam, Doon Road. Questions why the passageway on her property north of the appeal site is marked in green on the site layout plans. Concerns regarding services to the site.

Stephen Mulvihill, Doon Bay Road. Concerns regarding fire and safety hazard. Parking space inadequate. Emergency access, waste disposal and overshadowing.

4.0 **Planning History**

18/421 Permission was refused for demolition of existing derelict holiday chalet and construct a two-storey house and all associated site works. Refusal reasons considered that the proposed dwelling by reason of height scale and proximity to buildings would not integrate satisfactorily into the surrounding area. Justification for holiday home is not demonstrated.

18/189 Invalid application

03/3802 Permission granted to demolish existing chalet and outline permission to build a single storey dwellinghouse.

5.0 **Policy Context**

5.1. **Development Plan**

The Kerry County Development Plan 2015-2021 and Listowel Municipal District Local Area Plan 2020-2026 refer.

Ballybunion is designated as a district town in terms of the settlement hierarchy. The vision for Ballybunion is to maximise its growth in population and services to a level that will encourage the development of a vibrant town throughout the year and to promote Ballybunion as an attractive national and international year-round visitor destination, while maintaining and enhancing its physical assets, unique character and natural attributes.

The development plan outlines that the attractiveness of the town and surrounding area has led to significant demand over the years for holiday homes/second homes and mobile homes. Approximately 40% of the housing stock or c. 500 units fall into the category of holiday homes. Having regard to the significant number of holiday/second homes in Ballybunion, no additional holiday/ second homes shall be permitted on lands zoned for R1, or R4 residential use.

The appeal site is located within the development boundary for Ballybunion and is zoned R2 Existing Residential.

5.2. Natural Heritage Designations

The site is not within a designated area.

The Lower River Shannon SAC occurs within 150m.

The River Shannon and River Fergus Estuaries SPA is within 6km to the north.

5.3. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The third-party appeal is submitted by Stephen Mulvihill, Doon Bay Road, Ballybunion. Grounds of appeal are summarised as follows:

- Development blocks access to passageway to house to east.
- Development is contrary to building specifications and regulations
- Building is twice the length and width and higher than previous building.
- Parking space inadequate and impedes access for emergency vehicles.
- Inadequate setback from the building to the south will prohibit the rendering and maintenance of the structure.
- Building overshadows the thermal solar panels of the adjacent building to the north of the structure.
- The unauthorised construction on the site contrary to good planning and demonstrates disregard for planning laws and regulations.
- Proposal is contrary to proper planning and sustainable development and would set an undesirable precedent in the area.
- Note decision dated 1st April was not received by post till 7th April. The timeline prejudicial to third party rights.

6.2. Applicant Response

The applicant did not respond to the third-party appeal.

6.3. Planning Authority Response

The response of the Planning Authority notes that this is a serviced site within the Ballybunion Town Boundary and was previously occupied by a chalet. New building is to be used as a holiday home. While the building is larger than the previous chalet it can integrate into the surrounding area. One car parking space is sufficient for holiday home. Site is within walking distance of the beach and amenities. Condition of permission prohibits car parking on the adjoining laneway and this will be enforced as necessary.

6.4. Observations

6.4.1 Observation submitted by Don and Brenda Toomey, Doon Road in support of the appeal outlining objection to the proposed retention on a number of grounds summarised as follows:

- Development materially and negatively affects adjoining property.
- Development has caused water ingress onto adjoining property.
- Boundary wall now has lateral loading from the development substructure due to raising of grounds levels.
- Development cannot be completed without access to neighbouring property permission for which will not be forthcoming.
- Waste and emissions
- Previous outline permission expired 13 years ago and could not be taken as permission to carry out any works.
- No account of need for set back, provision for open space parking provision
- Noise fumes and other nuisance. This party concerns were not addressed in any meaningful way.
- Non-compliance with building regulations.
- Plans, elevations and sections do not accurately represent the building.
- Water and wastewater details are inadequate. No wayleaves in place.

6.4.2 Observations submitted by Josphine Mulivill, Doon Bay Road including photographs to demonstrate vehicle associated with the development blocking entrance opposite the site. Concerns with regard to access for emergency vehicles.

7.0 Assessment

7.1 The relevant matters to be addressed within this appeal can in my view be assessed under the following broad headings.

Ownership / Legal and Procedural Issues

Scale Design and Impact on Residential Amenity

Appropriate Assessment.

7.2 **Ownership / Legal and Procedural Issues**

7.2.1 With regard to ownership and legal issues I note that the third-party appellant asserts that there is a right of way / passageway to the adjoining dwelling to the east which has been obstructed by the development proposed for retention. This was queried in the council's request for additional information and in response it was noted as follows: "There is no right of way through the site, We would refer to your own photographs on this file which shows that the passageway was completely overgrown and inaccessible. We do not know who owns the house immediately to the east." I consider that this response is deficient. Notwithstanding, the overgrown nature of the passageway this would not extinguish of any right of way or prove an intention to abandon a right of way. It is not clear at what point the appeal site became separated from the adjoining site to the east however it is clear that the site once formed part of the curtilage of this dwelling and any potential development of the site should have regard to this context. In the absence of further detail with regard to ownership the question arises as to whether the applicant has sufficient legal interest in the site to make the application. This matter should be addressed in any future application.

7.2.2 Regarding the validity of the application and procedural matters, I note the poor quality of application drawings and absence of detail in particular section drawings contiguous elevations to demonstrate context and enable assessment of the development proposed for retention. I note the third-party appellant's comments with regard to the retrospective nature of the application and the apparent disregard of the need to obtain prior permission and to follow proper planning procedures. I note that given the planning history on the site in particular refusal 18/421 the applicant would have been aware of the site's constraints however, the Irish Planning system provides for regularisation of unauthorised development by way of

retention application and therefore it is appropriate that the development for retention and completion be considered on its planning merit.

7.3 Scale, design and impact on residential amenity

7.3.1 The planning authority considered that the principle of development on the site to be acceptable in view of the brownfield nature of the site and its serviced location. The Planning Authority also took account of previous permission 03/3802 granted by Kerry County Council in 2004 for permission to demolish the existing chalet and outline permission to build a dwellinghouse. I note that there is no record of an earlier permission for the chalet structure. In light of the serviced location and the 2004 permission I consider that some degree of densification within the town centre is acceptable in principle. However, given the backland nature of the site and proximity to established dwellings any development should clearly have regard to impact on established residential amenity and the question of site capacity to provide for an appropriate standard of residential amenity is also a consideration.

7.3.2 I have noted the somewhat unusual evolution of the development description during the course of the application to the Council whereby the development was initially described as “retain and complete house” and whereas in response to the request for additional information on the suggestion of the area planner that consideration be given to the “use of the dwelling on site as a holiday home instead of a full time residence having regard to the density of development on site” the description was amended to “permission to retain and complete the structure on site for use as a holiday home”. I note that the ownership of the site is apparently completely separate from the dwelling to the east however given its backland relationship the issue of impact on residential amenity of this dwelling is an important consideration. As regards the residential amenity of the proposed dwelling unit, I note that in terms of floor area the internal layout performs poorly and does not meet the minimum floor area standards of Sustainable Urban Housing Development Standards for New Apartment Guidelines 2020. The site is backland severely constrained and there is no provision of open and amenity space.

7.3.3 Regarding the scale and design of the development I note that it is located immediately adjacent to the southern boundary and according to the observer has resulted in water ingress to their property with concerns also expressed with regard to structural impact on the boundary wall. I note that third party boundary issues are civil matters between the parties and are not strictly matters for the Board. However, I consider that the building proposed for retention which extends for a distance of 15m along the southern boundary by reason of its scale and height and notwithstanding the proposal to remove the two windows, is overbearing and significantly detrimental to the residential amenity of this adjoining dwelling to the south. As regards the impact on the residential dwelling to the east I would be of the view that by reason of the scale height and proximity to the boundary the development is significantly detrimental to the residential amenity of this dwelling. The dwelling, proposed to be retained, would clearly diminish the amenity of the area and interfere with the character of the area. Overall, I consider that permission be refused. Regarding the issue of parking, I consider that onsite provision would not be warranted given the constrained nature of the site and potential for creation of hazard.

7.4 Appropriate Assessment

7.4.1 On the issue of appropriate assessment I note that the development is located within the serviceable urban area of Ballybunion within an established residential area. The location which is separated from the Lower River Shannon SAC by buildings, infrastructure and other developments. Having regard to the nature, scale, and location of the development proposed for retention, the serviced nature of the development proposed for retention, the nature of the receiving environment, and the separation distance to the nearest European sites, 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 planning permission to retain and complete the development should be refused for the reasons and considerations as set out below.

Reasons and Considerations

1. Having regard to the restricted and backland nature of the site and the established pattern of development in the surrounding neighbourhood, it is considered that the development proposed to be retained by reason of its scale, form and design would constitute overdevelopment of a limited site area, would constitute substandard development, give rise to a poor standard of residential amenity and would set an undesirable precedent for similar such development. The development proposed for retention would be overbearing in terms of its impact on established adjacent dwellings would be visually obtrusive on the streetscape and out of character with development in the vicinity. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

09 August 2021