



An  
Bord  
Pleanála

## Inspector's Report ABP 311756-21.

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<b>Development</b>	Retain and complete construction of dwelling.
<b>Location</b>	6 Bishop Moynihan's Crescent, Kilcoolagh, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	21/926
<b>Applicants</b>	Michael Cronin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Bernard and Geraldine Moloney
<b>Observers</b>	None
<b>Date of Site Inspection</b>	21 <sup>st</sup> of January 2022
<b>Inspector</b>	Siobhan Carroll

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## 1.0 Site Location and Description

- 1.1. The appeal site located at Bishop Moynihan's Crescent is situated within a long-established housing estate located to the north of Killarney town centre. The site is accessed from a laneway situated to the eastern side of Marian Terrace.
- 1.2. The site has a stated area of 0.025ha. It was previously part of the rear garden of no. 6 Bishop Moynihan's Crescent. No. 6 Bishop Moynihan's Crescent is a single storey semi-detached dwelling located within a cul de sac containing 11 no. dwellings. There is a pedestrian laneway immediately to the west of no. 6 Bishop Moynihan's Crescent which forms part of a wider pedestrian route between Marian Terrace and Killarney town centre.
- 1.3. On inspection of the site I noted that the subject dwelling which is under construction. The external structure of the dwelling has been completed. The site is bounded by a block wall to the northern and western boundaries. The height of the western boundary wall is staggered with the level dropping and the ground level falls to the south. A single storey dwelling has been constructed to the rear of no. 5. Bishop Moynihan's Crescent. It is situated to the west of the appeal site on the opposite side of the laneway.

## 2.0 Proposed Development

- 2.1. Permission is sought to retain and complete the construction of dwelling. The subject dwelling is detached with a floor area of 69sq m.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 14 no. conditions.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- It is stated in the report that changes have been made to the elevations and velux rooflights are shown in the attic space. The attic is identified as storage space. The dwelling as constructed is taller than that permitted under 19/1003. The finished floor levels on the site have been lowered and the overall difference in ridge height is circa 450mm. The submissions on file raised the issue of the windows and the potential use of the attic as a bedroom space. It is recommended in the report that a condition be applied to ensure that there are no rooflights serving the attic space and that the attic is not used as a habitable space. In relation to potential impact upon residential amenity it is concluded in the report that the dwelling to be retained has no more of an impact on the amenities of the dwelling house no. 7 Bishop Moynihan's Crescent than the house granted under Reg. Ref. 19/1003. A grant of retention planning permission and planning permission was recommended.

#### 3.2.2. Other Technical Reports

- None

#### 3.3. Prescribed Bodies

Irish Water: Report dated 23/9/2021 – No objection

#### 3.4. Third Party Observations

- 3.4.1. The Planning Authority received a number of submissions/observations in relation to the application. The issues raised are similar to those set out in the appeal.

#### 4.0 Planning History

**PA Reg. Ref. 19/1003** – Permission was granted for the construction of a single storey dwelling house. The permission was subject to 14 no. conditions.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2014

- 5.1.1. Chapter 3 – Housing – sets out the housing policies and objectives including the following:
- 5.1.2. **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.
- 5.1.3. **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.

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

- 5.2.1. 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 and also addresses several other planning issues. The site is 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.

### 5.3. Natural Heritage Designations

- 5.3.1. Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site code 000365) and Killarney National Park SPA (Site code 004038) are located approx. 725m to the west.

### 5.4. EIA Screening

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA -

Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal was submitted by SJK Engineering & Surveying Ltd on behalf of the appellants Bernard and Geraldine Moloney. The issues raised are as follows;

- The application form for the subject planning application and the previous application 19/1003 both state that pre planning meeting were carried out however the details of meeting including the dates they occurred were not included.
- Only one car parking space is identified to serve the proposed dwelling. It is stated that this does not comply with the requirements of the County Development Plan.
- The dwelling as permitted on the site under Reg. Ref. 19/1003 had a floor to ridge height of 5.225m. The report of the Planning Officer in relation to Reg. Ref. 19/1003 stated that the dwelling would integrate well with the adjoining bungalows along Bishop Moynihan Crescent.
- The dwelling as constructed on site is not in accordance with the plans approved under Reg. Ref. 19/1003 in relation to the design of the dwelling and the orientation of the dwelling.
- The ridge height of the dwelling as constructed which it is proposed to retain is 6.130m. The subject dwelling will be higher than the neighbouring bungalows. It is considered that the dwelling would be visually intrusive and will not be in keeping with the design of the surrounding properties.
- As detailed on the submitted plans an attic storage space with a floor to ceiling height of 2.4m is proposed. It is considered that the room may be used as a habitable room.
- It is stated in the application that storm water will be disposed of to a soak away on the site. It is highlighted the site is relatively confined and that no

design of the proposed soakaway has been submitted. Therefore, concern is expressed in relation to surface water drainage.

- Details in relation to how a connection to Irish Water will be achieved have not been submitted and therefore there might be issues with getting a connection to Irish Water to serve the dwelling.
- The height of the new western boundary wall is proposed to be 1.2m high along the existing public laneway. The proposed height of the wall is not in keeping with the boundary wall of the neighbouring property on the opposite side of the laneway which is between 1.4m to 2m in height.
- It is concluded that the dwelling as constructed is not in keeping with the character of the area. It is submitted that the ridge height of the dwelling should at a minimum be revised to be in accordance with the original height of the dwelling as granted under Reg. Ref. 19/1003.
- The appellants request that their concerns are taken into consideration in the assessment of the appeal.

## 6.2. Applicant Response

A response to the appeal has been submitted by Leahy Planning Ltd on behalf of the applicant Michael Cronin. The issues raised are as follows;

- The principle of the development of a dwelling within what had been the existing rear garden of no. 6 Moynihan Crescent has already been decided under planning permission Reg. Ref. 19/1003.
- Therefore, the only matters to be considered in relation to this application and appeal refer to the variations between the original grant of permission and the application for retention.
- While a number of matters raised in the appeal do relate to the issues of the changes made from the permission granted under Reg. Ref. 19/1003, many of the issues raised including potential traffic hazard, housing policy and connection to services have already been decided under the earlier permission. Therefore, it is considered that these matters are not substantive to the current application.



- In relation to the increase in ridge height, it is stated that the overall increase in height of the building is only 450mm above that originally granted as the floor level has been reduced. This is confirmed in the report of the Planning Officer in respect of Reg. Ref. 21/926. It is noted that the dwellings within the estate are generally feature low ridge heights. It is also noted that the dwellings are well separated from each other given that the estate is low-density. It is set out in the appeal that the very moderate increase in height as proposed would have a significantly detrimental effect on the estate. This assertion is disputed.
- The increase in ridge height was achieved primarily by increasing the pitch of the roof in order to make the attic space more usable. It is considered that the steeper pitch is more attractive than the low pitch design permitted under Reg. Ref. 21/926. It is argued in the appeal that the subject dwelling is visually obtrusive and out of keeping with the surrounding properties in the estate. Therefore, it is set out in the appeal that the only way to achieve an attractive visual environment within an estate would be by imposing a uniformity of all building types, heights and roof pitches. This is at variance with the provisions of “Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities” which advocates the development of a variety of building types and forms. The estate contains dwellings with a variety of different orientations therefore, it is considered that the estate can assimilate the proposed variation in roof pitch.
- The appeal refers to the site being provided with one car parking space. The dwelling contains one bedroom and conditions attached to the permission preclude the use of the attic space for residential purposes. As set out in the Killarney Town Development Plan (as extended and varied), specifically section 12.53.3 the standards for car parking requires one space for one and two bedroom residential units.
- The appeal refers to the potential extension of residential use. Permission is not sought for an additional bedroom in the attic space. Condition no. 5 as attached to the permission granted by Kerry County Council specified that there be no rooflights to the roof space and it precludes the use of the attic for residential purposes. The applicant is amenable to complying with this

condition. In relation to the attic space it is stated that it is important that adequate provision be made for storage and the subject roof space with a short roof span is suitable for this use. It is also noted that there is no provision for a staircase and that the head height of the storage area would not provide for its use for habitable purposes under the building regulations.

- The matter of surface water drainage is raised specifically in relation to suggestion that the soak pit could give rise to flooding. The appeal response includes soak away design calculations prepared by MHL Consulting Engineer's and the proposed site plan prepared by Griffin Project Management, Drawing No: 21-001-08 indicating the location of the soak pits on site. It is also noted that condition no. 4 attached to the permission granted by the Planning Authority referred to surface water run-off.
- It is suggested in the appeal that there is not an adequate fall to provide for outfall to the existing public sewer. This is not correct. Furthermore, it is stated that condition no. 6 attached to the permission granted by the Planning Authority requires agreement with Irish water prior to sewer connection. The appeal response includes a submission from the applicant's engineer which states that from a survey of the line and the foul manholes upstream and downstream of the connection point, the invert level of the foul sewer has been ascertained as 35.85m. The floor level of the dwelling being 37.00m and this demonstrates that a connection to the foul sewer is easily achievable.
- The issue of the boundary wall is raised in the appeal. It is stated that because the western boundary wall would be 1.2m in height rather than the 1.4m to 2m heights which is the case in other nearby boundary walls that it would be inappropriate. The provision of a lower boundary wall will allow for passive overlooking of the adjacent laneway which will serve to prevent the potential for antisocial behaviour on the laneway. It is noted that the Planning Authority in their assessment of the proposal were satisfied with the design of the boundary wall and attached conditions requiring that the wall be capped and plastered.
- It is requested that the Board uphold the decision of Kerry County Council and grant permission.

### 6.3. Planning Authority Response

- Kerry County Council decided to grant permission subject to conditions following assessment of the initial application documents and the observations and objections received. The assessment of the application by the Planning Department of Kerry County Council is set out in full in the Planner's Report.
- The majority of issues raised in the third party appeal have been raised in the original objections to the planning file. These issues were addressed in the Planner's Report and the Planning Authority has no further comments to make on issues such as traffic, design, impact on neighbouring properties etc.
- The appeal states that "*details in how a connection to Irish Water will be achieved has not been submitted and due to the finished floor level of the dwelling there might be issues in getting a gravity fall to a connection to Irish Water serving this dwelling?*" The Planning Authority would like to state that the application was sent to Irish Water and they stated that the connection to the public water supply was feasible and that they had no objection. A standard "*water connection agreement*" condition was attached to the planning permission.
- The Planning Authority has considered the submission made to An Bord Pleanála by Leahy Planning Ltd on behalf of the applicant. The Planning Authority has no further comment to make as the matters were covered in the original Planner's Report.

### 6.4. Observations

- None

### 6.5. Further Responses

- 6.5.1. A further submission was received from SJK Engineering & Surveying Ltd. on behalf of the appellants Bernard and Geraldine Moloney in response to the submission received from the first party in respect of their third party appeal. The issues raised are as follows;

- It is stated in the submission that the appellants accept the situation that planning permission for the dwelling has previously been obtained under Reg. Ref. 19/1003. The issues raised in the appeal were made against the overall situation. The appellants accept that if the dwelling were constructed as per the grant (Reg. Ref. 19/1003) that no issues can be raised at this point.
- As per the details on file the finished floor level of the dwelling granted under Reg. Ref. 19/1003 was 37.25 with a floor to ridge height of 5.225. under the current application for retention the finished floor level is identified as 37.00 with a floor to ridge height of 6.130m. The ridge height as now constructed is 655mm higher than what was granted permission under Reg. Ref. 19/1003. The appellants contend that this increase in the height of the dwelling is not acceptable.

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Design and visual amenity
- Other issues
- Appropriate Assessment

### 7.1. Design and visual amenity

- 7.1.1. It is proposed to retain and complete the construction of a dwelling at No. 6 Bishop Moynihan's Crescent. Under Reg. Ref. 19/1003 permission was granted for the construction of a single storey dwelling house containing one bedroom with a floor area of circa 66sq m and a ridge height of 5.225m. The dwelling featured a roof with a relatively low pitch.
- 7.1.2. The dwelling is currently under construction on site and the differences in the design of the property which it is proposed to retain and complete entail a minor increase in floor area from 66sq m to 69sq m. The design of the roof proposed features a

steeper pitch than that originally permitted. The ridge height of the dwelling granted under Reg. Ref. 19/1003 at 5225mm is circa 905mm lower than the ridge height now proposed at 6130mm. In relation to the finished floor level of the subject dwelling it is indicated on the Site Section Drawing No: 21-001-06 as 37m which is circa 455mm lower than the finished floor level which was granted permission under Reg. Ref. 19/1003.

- 7.1.3. The submitted plan of the proposed west elevation indicate two high level rooflights within the roof plane. I noted on inspection of the site that these rooflights have not been installed into the roof. The appeal raises concern at the potential use of the attic space as a habitable room. It is stated in the first party response that permission is not sought for an additional bedroom in the attic space. The Planning Authority in their grant of permission attached condition no. 5 which specified that there shall be no rooflights to the roof space and it precluded the use of the attic for use as a habitable space. It is confirmed in the appeal response that the applicant is amenable to complying with this condition. It is also noted in the first party response that no staircase is proposed to serve the attic space and that the head height of the storage area would not provide for its use for habitable purposes under the building regulations.
- 7.1.4. In relation to the attic space while I note that the increase in the pitch of the roof would increase the floor to ceiling height of the central area of the attic to 2.4m, it would not cover a sufficient area to provide for a habitable room. I note that the first party confirms that the attic is not proposed as a bedroom and is required for storage purposes. Accordingly, similar to the approach taken by the Planning Authority on the matter I consider that it would be appropriate to attach a condition restricting the use of attic space for storage purposes only and I also consider that it would be appropriate to attach a condition requiring that no roof lights shall be installed on any of the roof elevations in order to protect the residential amenity of neighbouring property.
- 7.1.5. The appeal raised concern that the height and design of the roof of the dwelling would be out of character with the surrounding properties. It was suggested that it would be more appropriate if the roof design were constructed as originally granted under Reg. Ref. 19/1003. In relation to the proposed roof design, while I note that the pitch of the roof is steeper than the roof profile as originally granted, I note that the

proposed ridge height of the dwelling is only circa 450mm higher as the finished floor level of the dwelling as built has been reduced by 455mm. Therefore, given that the subject dwelling remains single storey and that the overall ridge height is only marginally higher than that permitted on site I am satisfied that the proposed dwelling would not unduly impact upon the character of the area and the surrounding streetscape.

- 7.1.6. Furthermore, subject to the omission of rooflights to the west elevation of the dwelling, I am satisfied that the proposed development would not detract from the residential amenities of neighbouring property.
- 7.1.7. The appeal refers to the height of the western boundary wall and states that it would be preferable if the height of the wall match that of the neighbouring property on the opposite side of the lane. As detailed on Drawing No: 21-001-05, the proposed height of the western boundary wall is 1.2m. In relation to the matter of the height of this boundary wall it is stated in the first party response that the provision of a lower boundary wall will allow for passive overlooking of the adjacent laneway which will serve to prevent the potential for antisocial behaviour on the laneway. The first party response also noted that the Planning Authority were satisfied with the design of the boundary wall. I consider the proposed height of the western boundary wall which directly addresses the public laneway is appropriate to this context. Accordingly, in relation to the overall boundary treatment which comprises walls I consider the proposals are acceptable subject to the attachment of a condition which requires that the boundary walls shall be suitably capped and rendered and that details concerning the boundary walls be submitted to the Planning Authority for their written agreement.

## 7.2. **Other issues**

- 7.2.1. The appeal refers to the matters of car parking, surface water drainage and foul drainage. I note the response from the first party which states that these matters have been previously addressed in the original application for a dwelling on the site which granted under Reg. Ref. 19/1003. I would concur with this response. The development as proposed to be retained and completed and detailed on the submitted Site Layout Plan on Drawing No: 21-001-102 indicates one car parking space to the north-eastern corner of the site and served by a sliding access gate. I

note this car parking and access arrangement is the same as that proposed under the original application. The provision of one car parking space to serve the subject one bedroom dwelling is in accordance with the requirements of section 12.53.3 of the Killarney Town Development Plan, which specified that a minimum of one car parking space shall be provided within the curtilage of each dwelling house.

7.2.2. As indicated on Drawing No: 21-001-102 a soak pit is proposed to the east of the dwelling within the site. I note this is the same as on-site surface water drainage arrangement as that proposed under the original application and is indicated on Drawing No: 19-015-02 Rev A and submitted as part of the further information response with Reg. Ref. 19/1003.

7.2.3. In relation to the proposed connection to the foul sewer I note the appeal response from Kerry County Council which confirms that the application was sent to Irish Water, and they stated that the connection to the public water supply was feasible and that they had no objection.

### **7.3. Appropriate Assessment**

7.3.1. The site is located within 725m 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**

8.1. I recommend that the Board grant retention permission and permission for the proposed development subject to the conditions set out below.

## **9.0 Reasons and Considerations**

9.1.1. Having regard to the policies and objectives as set out in the Killarney Town Development Plan 2009-2015 (as varied and extended), to the scale and nature of

the proposed development and to the nature and character of the surrounding environment, it is considered that subject to compliance with the conditions set out below, the proposed development would be an acceptable form of development at this location and would not seriously injure the amenities of the area. 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 retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 23<sup>rd</sup> day of September 2021, 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. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.

3. Water supply and drainage arrangements, including the attenuation and 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.



4. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority within three months of the grant of this permission.

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

5. The attic space shall be used for household storage purposes only.

**Reason:** To ensure a satisfactory standard of development.

6. No roof lights shall be installed on any of the roof elevations. Revised plans indicating the proposed rooflights in the west elevation omitted shall be submitted to the planning authority within three months of the grant of this permission.

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

7. The boundary walls shall be suitably capped and rendered. Details in this regard shall be submitted to and agreed in writing with the planning authority within three months of the grant of this permission.

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

8. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

9. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1300 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

10. All service cables associated with the proposed development (such as electrical, communal television, telephone, and public lighting cables) shall be run underground within the site.

**Reason:** In the interests of orderly development and the visual amenities of the area.

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Siobhan Carroll  
Planning Inspector

4<sup>th</sup> February 2022