



An
Bord
Pleanála

Inspector's Report

ABP-313085-22

Development	Retain house within revised boundaries, retention for foundations of shed and permission to complete shed.
Location	Ballycarnahan, Caherdaniel
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	211521
Applicant(s)	Michael Price
Type of Application	Retention Permission and Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Michael Price
Date of Site Inspection	22 nd June 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The appeal site is located on the Iveragh Peninsula in West Kerry. It is situated in the countryside approximately 1.1km to the southwest of the junction of the L7542 local road and the N70 national road, and approximately 1.4km to the southwest of the village of Caherdaniel. The site is located off the county road and is accessed via a private access road that also serves ten houses, all on their own large sites.
- 1.2. The site of the development for retention has a stated area of 0.44 hectares. The site is comprised of dormer house, landscaped garden, hardstanding area for the proposed domestic garage to the rear of the house, and a rock outcrop as the northern boundary with a low fence along the south-eastern boundary. There are two houses immediately to the north/northwest of the appeal site and three houses to the southeast, all of which formed part of a residential development of eight houses in the 1990's.

2.0 Proposed Development

- 2.1. The development comprises the retention of a house (stated area of 165m²) on the site with revised site boundaries, the retention of the foundations for a shed to the rear of the house, and permission to construct a shed (stated area of 50m²) on the foundations, all at Ballycarnahan, Caherdaniel, Co Kerry. The house is serviced by an existing connection to the public water supply, an existing on-site wastewater treatment system, and a soak pit for surface water drainage.

3.0 Planning Authority Decision

3.1. Decision

By order dated 24th February 2022 Kerry County Council issued notification of decision to Refuse Permission for the development for the following reason:

The development is located within an area zoned Rural Secondary Special Amenity Area in the County Development Plan where it is policy of the Planning Authority to limit development to a site and design that will not have an adverse impact on the character of the landscape. The retention of the dwelling house on an elevated and

exposed site would seriously injure the amenities of the area by reason of its obtrusiveness and it would interfere with the character of the landscape and natural beauty of the area, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry County Development Plan 2015-2021. Therefore, it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer in the report dated 24th February 2022 stated the relevant development plan and zoning for the area, outlined the planning history on the site, noted the third party submissions and recommended that permission for retention be refused due to its adverse impact on the landscape and natural beauty of the area, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

3.2.2. Other Technical Reports

Biodiversity Officer – The report dated 14th February 2022 states that the development for retention would not have a significant effect on any European Site.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

There were two submissions made on the planning application outlining concerns in relation to inconsistencies and errors in the application documentation, the size and scale of the development, impact on protected sites/species, boundary location, unfinished areas in the overall residential development, legal interest in the land, and the history of alleged illegal development on the site.

4.0 Planning History

4.1. Appeal site:

P.A. Ref. No. 93/1117: Permission granted for revised house plans, site boundaries and service road for 8 no. houses.

P.A. Ref. No. 99/3055: Permission granted to retain and complete houses on site no.'s 1, 4 and 6.

P.A. Ref. No. 05/3874: Permission refused to retain and complete existing house.

P.A. Ref. No. 07/2621: Permission refused to retain and complete existing house.

5.0 Policy Context

5.1. Kerry County Development Plan 2022 - 2028

The Board should note that the Planning Authority carried out their assessment of the proposed development based on the policies and objectives contained in the Kerry County Development Plan 2015-2021. The Kerry County Development Plan 2022-2028 came into effect on 15th August 2022.

- 5.1.1. The site is located in an area designated as 'Other Rural Area' under Section 5.5 Rural Housing of the Plan. Under **Objective KCDP 5-16** it is policy to:

'... accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas. Preference should be given to renovation/ restoration/ alteration/ extension of existing dwellings on the landholding before consideration to the construction of a new house.'

- 5.1.2. Under Section 5.7 Holiday / Second Homes of the Plan it is stated that 'the County experiences pressure for holiday / second homes particularly in visually sensitive landscapes. It is apparent from the Census 2016 that the level of holiday homes in some areas far exceeds the local indigenous population. The overall result of this sporadic one-off development is an incremental deterioration of the visual and in

some cases, the ecological qualities of the landscape'. Under Objective KCDP 5-23, it is policy to:

'Ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.'

- 5.1.3. Section 11.6.3 relates to development in designated landscapes. The site is located within a designated **Visually Sensitive Area - Secondary Special**, which 'comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation'.

Objective KCDP 11-76:

Have regard to any future National Landscape Character Assessment, Regional Landscape Assessments and Landscape Character Map, and the publication of Section 28 Guidelines on Landscape Character Assessment.

Objective KCDP 11-77:

Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

5.2. Natural Heritage Designations

The site is not located within any European site. The closest Natura 2000 site is the Kenmare River SAC (Site code: 002158) located immediately adjacent to the southeast of the appeal site. The Iveragh Peninsula SPA (Site code: 004154) is located approximately 500m to the west and 600m to the southwest of the appeal site and the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site code: 000365) is located approximately 1.4km to the north of the appeal site.

5.3. EIA Screening

Having regard to the nature and scale of the development and separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are submitted by Albert Walsh, Architectural Technologist, Lakelands House, Waterville, Co. Kerry on behalf of the First Party, Michael Price, and the main points made can be summarised as follows:

- Contends that the house under this appeal does not seriously injure the amenities of the area by reason of its obtrusiveness no more or less than any other house in the development (photographs are included with the appeal).
- Contends that the entire eight house development requires regularisation with planning when modern mapping and satellite images are used to compare the permitted development with that constructed.
- Includes a letter from Kerry County Council outlining the 'statute barred' nature of the development.
- Includes letters of support from owners/occupiers of neighbouring houses.
- Includes a copy of his solicitor's letter confirming the Circuit Court ruling dismissing Kerry County Council's injunction for the removal of the house from the appeal site.

6.2. Planning Authority Response

The Planning Authority has not responded to the grounds of the appeal.

6.3. Observations

6.3.1. An observation was made by TPlan Planning Consultants on behalf of Gary Duffy, Ballycarnahan, Caherdaniel, Co. Kerry and the main points made can be summarised as follows:

- Highlights inconsistencies regarding the installation of the wastewater treatment unit and percolation area.
- Contends that the house for retention and the proposed garage are larger in area than annotated on the drawings with the application/appeal.

- Advises that the Board will need to be satisfied that no potential for pollution events would occur to impact the nearby pNHA and SAC.
- Concerned that boundaries to his property are not properly set out in the mapping submitted as a result of the increase in site size from 0.38ha to 0.44ha.
- Outlines unfinished and unresolved matters to the overall development including roads, drainage and alleged non-compliance with planning conditions.
- Contends that the house on the site was not complete in 2005 and includes photographs of the house stated to be between c.2005 to c.2020.
- Contends that the entrance pillars and access road to the house are constructed on his land and includes land registry details supporting this.
- Outlines the abridged history associated with P.A. ref. no. 93/1117 and includes a letter from Kerry County Council confirming that the planning authority are statute barred from taking action in relation to the location of the house and the septic tank.

7.0 **Assessment**

I consider the main issues in determining this appeal are as follows:

- Principle of Development
- Visual Amenities
- Other Issues
- Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. Kerry County Council granted permission for revised house plans for a development of 8 no. houses on the appeal and adjoining sites under P.A. Ref. No. 93/1117. Having reviewed the Planning Officer's report, the documentation submitted with the appeal and the third party observations on the file, I note that it is apparent and accepted by all parties that the house on the appeal site has been constructed at a different location on the appeal site to where it was originally permitted. Hence, the

need for the First Party to seek to regularise consent for the house via this planning application/appeal.

- 7.1.2. The appeal site is located in a designated visually sensitive landscape in County Kerry and in an area that experiences pressure for holiday / second homes. The extent of holiday homes in this area (>50% of the housing stock) is highlighted in Section 5.7 of the County Development Plan. Under **Objective KCDP 5-23**, it is policy of Kerry County Council to 'Ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.'
- 7.1.3. Further to this, the appeal site is located in an area designated as 'Other Rural Area' under Section 5.5 Rural Housing of the Plan where, under **Objective KCDP 5-16**, it is policy to '... accommodate demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, wastewater treatment and the protection of important landscapes and environmentally sensitive areas.'
- 7.1.4. Although these are the relevant policies for the assessment of new houses / holiday homes in this part of County Kerry, I consider that there are other matters that need to be factored into this assessment also, namely:
- The contention and photographs provided by the Observer that the house was on the site, although not complete in 2005,
 - A copy of a letter from Kerry County Council outlining the 'statute barred' nature of the development, and
 - A copy of a letter from the First Party's solicitor confirming a Circuit Court ruling dismissing Kerry County Council's injunction seeking the removal of the house from the site, and
 - Confirmation in the Planning Officer's report that the Court decision gave the First Party's father permission to finish the substantially complete house on the site (excluding the side extension).
- 7.1.5. Having examined all the material on the file and taking all these factors into consideration, I am satisfied that the principle of a house on the appeal site was established on the site under P.A. ref. no. 93/1117, the house was substantially

complete in 2005, was subject to a court order dismissing Kerry County Council's order to remove it from the site in 2011 and is now acknowledged by Kerry County Council as being statute barred from further enforcement proceedings. On this basis, I consider it reasonable and pragmatic to accept the principle of a house on the appeal site, subject to the normal planning and environmental considerations.

7.2. Visual Amenities

- 7.2.1. The site is located within a designated **Visually Sensitive Area - Secondary Special**. I note the reason for the refusal of the planning application by the Planning Authority due to its location on an 'elevated and exposed site that seriously injure the amenities of the area by reason of its obtrusiveness' and 'it would interfere with the character of the landscape and natural beauty of the area, which is necessary to preserve, in accordance with **Objective ZL-1** of the Kerry County Development Plan 2015-2021'. The equivalent policy in the Kerry County Development Plan 2022-2028 Plan and the one that is most relevant to this assessment and to the Board now is '**Objective KCDP 11-77**: Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.'
- 7.2.2. The First Party contends that the house under this appeal does not seriously injure the amenities of the area by reason of its obtrusiveness no more or less than any of the seven other houses in the development. I have reviewed the photographs submitted in the appeal by the First Party and, on the day of my site inspection, I observed a mix of house types and designs in this development and the wider rural area around the appeal site. A number of houses within the development are the same design (with side extension) as the house on the appeal site. I consider that the proposed house design is modest in scale, traditional in form and design, and I agree with the contention of the First Party and consider that the house for retention does not form any more of an incongruous feature on this rural landscape than any of the other seven houses in this development. I, therefore, am satisfied that the house for retention would have minimal additional impact on this sensitive landscape than the house and development permitted by Kerry County Council in the 1990's.
- 7.2.3. The other aspect that needs consideration from a visual amenity perspective is the proposed completion of the domestic garage. The proposed domestic garage has a

floor area of 53m² and a height of 5.141m over the finished floor level. The scale of the proposed domestic garage is such that it is larger than the minimum required size for a standard 1-bedroom apartment and, although would be sited entirely to the rear of the existing dwelling, I consider that permitting such a large structure would set a precedent for similar large domestic garages in this primarily holiday/second home development and, consequently, this would have a significant negative impact on the visual amenities of the area. I recommend to the Board that the domestic garage should be omitted from the proposed development, and I include a condition effecting this.

7.3. Other Issues

Wastewater Treatment and Disposal

- 7.3.1. On the day of my site inspection, I observed that the wastewater treatment plant and associated percolation area were installed at the location indicated on the site layout plan submitted with the application/appeal, which differs from the parent permission. I note Kerry County Council have also reviewed the location wastewater treatment system on the site and have advised the First Party that, due to a Court Order, will not be pursuing any enforcement proceedings in relation to the type of wastewater treatment system installed or its location on the site. I am satisfied that the issue of wastewater treatment and disposal has been addressed under the parent permission and subsequent proceeding/orders and, consequently, does not need to be re-visited under this assessment. If an issue arises concerning ground water pollution or to public health, the planning authority would be able to pursue/resolve such matters through the appropriate environmental/water pollution legislation.

Enforcement

- 7.3.2. The third-party Observer outlines alleged unfinished and unresolved matters to the overall development including roads, drainage and alleged non-compliance with planning conditions. I further note the issue of non-compliance with bond condition on the parent permission is on-going and this may be pursued further by Kerry County Council, particularly in the absence of the completion of the service road for the residential development to a satisfactory standard.

7.3.3. In relation to these issues of an alleged/ongoing unauthorised development on the appeal site, it is of note that the Board does not have a role in enforcement and, in this respect, regard is had to Section 10.1 of the Development Management Guidelines 2007 which provides that enforcement of planning control is the responsibility of the planning authority.

Legal / Ownership

7.3.4. The third-party Observer contends that the entrance pillars and access road to the house are constructed on his land and includes land registry details supporting this. The entrance pillars and associated access road to the house do not form part of this appeal and are not contained within the site edged red application/appeal site. On the basis of the information available, I am satisfied that there is no clear information presented to conclude that the applicant does not have sufficient legal interest in the appeal site, and I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. In any case, this is a matter to be resolved between the relevant parties, the applicant and the local authority in this instance, having regard to the provisions of S.34(13) of the 2000 Planning and Development Act.

Discrepancies in Drawings

7.3.5. The third-party Observer is concerned that boundaries to his property are not properly set out in the mapping submitted as a result of the increase in site size from 0.38ha to 0.44h and he also contends that the house for retention and the proposed garage are larger in area than annotated on the drawings with the application/appeal. The First Party contends that the entire eight house development requires regularisation with planning when modern mapping and satellite images are used to compare the permitted development with that constructed.

7.3.6. I am satisfied that the issues in relation to the precise locations of boundaries are civil matters between the concerned parties and any related regularisation that may be required is a matter between each of the parties and Kerry County Council.

7.3.7. I have reviewed the drawings/plans for the house and the proposed garage. I can confirm that the house for retention has a floor area of approximately 178m² and the proposed domestic garage has a floor area of 53m², although both are stated as having floor areas of 165m² and 50m², respectively, on the application form.

Notwithstanding this, I have assessed the visual impact of the house for retention on the basis of the existing structure on the site and I have assessed the proposed domestic garage based on the drawings and floor plans presented. In conclusion, I am satisfied from my observations on the day of my site inspection that the drawings submitted are accurate and enabled a thorough assessment of the existing and proposed development on the appeal site.

7.4. Appropriate Assessment

Having regard to the nature and scale of the development proposed and the absence of any direct or indirect pathway between the appeal site and any European site and the separation distances to the nearest European sites ((Kenmare River SAC (Site code: 002158), the Iveragh Peninsula SPA (Site code: 004154) and the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site code: 000365)), no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that permission for retention of the development be granted for the following reasons and considerations, subject to conditions.

9.0 Reasons and Considerations

Having regard to the established principle of a house on the site and the design, character and layout of the development, it is considered that the development would not adversely impact on the visual amenities of the area, would be consistent with the provisions of the Kerry County Development Plan, and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This permission does not include the proposed domestic garage. Within three months of the date of this order, a revised site layout demonstrating the omission of the proposed domestic garage shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development on the site.</p> <p>Reason: In the interest of the visual amenities of the area.</p>
3.	<p>Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the house without a prior grant of planning permission.</p> <p>Reason: In the interest of the visual amenities of the area.</p>
4.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>

Liam Bowe
Planning Inspector

8th September 2022