



An
Bord
Pleanála

Inspector's Report

ABP-313203-22

Development	Remove boundary wall and decommission septic tank, install waste water treatment system, extension and hardstand to rear of garage.
Location	Lissyviggeen, Killarney, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	211106
Applicant(s)	Nocwerdna Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Cornelius Christopher Moynihan & others
Date of Site Inspection	22 nd June 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The appeal site is located to the east of Killarney town in Co. Kerry. It is situated in the countryside approximately 650m to the north of the junction of the N72 and N22 national secondary roads on the eastern approach to Killarney. The site is located off a county road and is accessed via a private access road that also serves eight houses, all on their own large sites.
- 1.2. The site is comprised of a large commercial unit, a smaller building along the southern boundary of the site, a central / open hardstanding area, and an area of scrubland to the rear / north of the main commercial unit. The First Party operates a crash repair / garage business from the premises. The existing commercial unit associated with this development has an area of 740m² and a height of 6.617m. The appeal site is enclosed along the eastern boundary by a 2m high block wall, by a security fence along the western boundary, and by a building along the southern boundary. The area to the north of the existing commercial building is open scrubland and extends into agricultural fields. The southern boundaries of the appeal site immediately to the east and west of the existing garage / unit have mature hedgerows as shared boundaries with the houses to the south.

2.0 Proposed Development

- 2.1. The site of the proposed development has a stated area of 0.7 hectares. The development comprises a 294m² extension to the rear of the existing garage / unit, the decommissioning of an existing septic tank and replacement with a wastewater treatment system, new hardstanding area to the rear of the garage / unit, the construction of an attenuation area for surface water run-off from the existing and new hardstanding areas, the removal of a rear boundary wall and the construction of a new 2.4m high boundary fence along the perimeter of the extended site, all at Lissyviggeen, Killarney, Co Kerry.

3.0 Planning Authority Decision

3.1. Further Information Request

Prior to issuing a notification of decision, the Planning Authority issued a further information request on 22nd November 2021 requiring details in relation to floor plans to clarify whether the extension is to be used as a separate unit, any increase in traffic, a landscaping scheme, design of the proposed attenuation area, confirmation whether condition no.4 of permission issued under P.A. Ref. No.17/137 is being adhered to, and clarification on the length of percolation trench being proposed.

The applicant submitted a response to this further information request to the Planning Authority on 15th February 2022, which included revised floor plans and confirmation that the proposal is an extension to the existing building, confirmation that the area will be used as storage for the existing business and will not result in increased commercial traffic, a landscaping scheme, detailed design of the proposed attenuation area, confirmation that the use of the building as one unit is in compliance with the parent permission issued by Kerry County Council, and confirmation that the total length of percolation trench is 72 metres.

3.2. Decision

By order dated 10th March 2022 Kerry County Council issued notification of decision to Grant Permission for the proposed development subject to 11 No. standard conditions.

3.3. Planning Authority Reports

3.3.1. Planning Reports

There are two Planning Reports on file dated 18th November 2021 and 9th March 2022, respectively. The Planning Officer in the initial report stated that the location of the site is in an area designated as 'Rural General' per the Kerry County Development Plan, and states that 'it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development'. The report recommended further

information be requested in relation to floor plans, traffic generated, a landscaping scheme, details of the proposed attenuation area, compliance with parent permission, and clarity on percolation trench length, 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.

A second Planner's Report (dated 9th March 2022) refers to the further information submitted and recommends that, having regard to the additional information, permission should be granted subject to 11 No. conditions.

3.3.2. **Other Technical Reports**

Site Assessment Unit – The report dated 18th November 2021 recommends that the site assessor clarify the total length of percolation trench being proposed. No objections to the further information received.

County Archaeologist – No objections.

3.4. **Prescribed Bodies**

Irish Water – No objection. Conditions recommended.

TII – No observations to make.

3.5. **Third Party Observations**

Three submissions on the proposal were received from Daniel and Eileen Hughes, Cornelius Christopher Moynihan and others, and Peter Guban and others. The submissions reflect the principal concerns raised in this appeal and these include concerns regarding alleged unauthorised uses, access arrangements during and after construction, and unsuitability of the rural area for a commercial development.

4.0 **Planning History**

4.1. **Appeal site:**

P.A. Ref. No. 17/137: Permission granted for retention of 1) steel clad storage extension to existing garage with roller shutter door at south-eastern corner of the

main building, 2) existing steel clad storage building ancillary to existing garage with roller shutter doors on the southern boundary of the site, and 3) all ancillary site works.

5.0 Policy Context

5.1. Kerry County Development Plan 2015 - 2021 (as extended)

5.1.1. Section 4.8 Rural Economy

Economic development in rural areas: **Objective ES-28**

Proposals for any economic development in rural areas must demonstrate:

- Compliance with the development standards of this Plan.
- That there will be no adverse impact on the residential amenity of nearby residents, particularly in relation to noise, traffic, air quality odours or vermin.
- That there will be no significant adverse effects on the environment including the integrity of Natura 2000 network.
- That there is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified, delivered and maintained.
- The proposal shall include sustainable waste management practices both at the construction and operation stages of the proposal.
- The proposal will not compromise water quality, nor the programme of measures contained within the South Western or Shannon River Basin Management Plans 2009-2015 (or subsequent updates).
- That the existing road network can safely handle any extra vehicular traffic movements generated by the proposed development or suitable developer funded improvements are identified and delivered to overcome any road related issues.
- Adequate access arrangements, parking, manoeuvring and servicing areas in line with standards set out in the Development Management, Standards and

Guidelines section of this Plan or as otherwise agreed in writing with the Planning Authority.

- Compliance, where appropriate, with the measures contained in the Plan as they relate to biodiversity protection and enhancement.
- Appropriate boundary treatment and means of enclosure are provided and that any areas of outside storage proposed are adequately screened from public view.
- All measures are taken to assist integration into the landscape. As part of this the use of signage should be kept to a minimum.

5.2. **Natural Heritage Designations**

The site is not located within any European site. The closest Natura 2000 site is the Kilarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site code: 000365) located approximately 770m to the northwest and 900m to the southwest of the appeal site.

5.3. **EIA Screening**

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

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are submitted by Cornelius Christopher Moynihan and others. The main points made can be summarised as follows:

- Contend that the expansion of the business will lead to an increase in traffic in this rural area and will adversely affect the amenity of the area.

- Contend that the proposed development will result in an excessive concentration of development served by individual wastewater treatment systems in the area.
- Contend that the proposal represents an urban type of development and would be contrary to the 'Sustainable Rural Housing Guidelines for Planning Authorities'.
- State that the current facilities are being used by a number of other businesses for storage.

6.2. Applicant Response

The First Party has not responded to the grounds of the appeal.

6.3. Planning Authority Response

The Planning Authority has stated that the issues raised are the same as those in the original objection and have been addressed in the Planner's Report. The Planning Authority has no further comments to make.

7.0 Assessment

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

- Principle of development
- Traffic safety and parking
- Wastewater treatment and disposal
- Other issues
- Appropriate Assessment

7.1. Principle of development

7.1.1. I note a number of concerns and contentions within the appeal that the proposal represents an urban type of development and would be contrary to the 'Sustainable Rural Housing Guidelines for Planning Authorities'.

7.1.2. Planning permission was issued under P.A. Ref. No. 17/137 for the retention of the steel clad storage extension to existing garage with roller shutter door at south-

eastern corner of the main building, and the existing steel clad storage building ancillary to existing garage with roller shutter doors on the southern boundary of the site. Although this permission did not establish the principle of the use on the appeal site, I am satisfied that it confirmed that the commercial garage use was in place and that the Planning Authority accepted this existing use of the site as authorised.

7.1.3. As stated previously, the appeal site is located in a rural area in Co. Kerry and the relevant policy for economic development in this area is contained within Section 4.8 Rural Economy of the Kerry County Development Plan 2015-2021 (as extended). Under Objective ES-28 of the Plan, proposals for any economic development in rural areas must demonstrate that there will be no adverse impact on the residential amenity of nearby residents, that the existing road network can safely handle any extra vehicular traffic movements generated, appropriate boundary treatment and means of enclosure are provided and that all measures are taken to assist integration into the landscape.

7.1.4. On the basis of the above, I consider the principle of an extension to the existing building and any associated works are acceptable, subject to compliance with the requirements of Objective ES-28 of the County Development Plan.

7.2. Traffic safety and parking

7.2.1. The issue of a traffic hazard has been mentioned by the Third Parties on this appeal in the context of a potential intensification of traffic activity as a result of the proposed extension and alleged unauthorised uses on the appeal site.

7.2.2. The appeal site is accessed from an existing entrance off the county road to the south. The access is shared with eight houses off the county road. This access road from the public road to the appeal site varies in width from c.5m to c.6.4m. From my observations on site, I consider access / egress to be safe for both residents on the access road and customers / staff visiting the appeal site. The vehicular entrance to the appeal site is over 6m in width. I note that the First Party has confirmed that the proposed extension will be used as storage associated with his existing business and that no increase in traffic movements will accrue.

7.2.3. From my observations on the day of my site inspection, I note the availability of on-site car parking. I also note the proposed extension entails providing storage for cars

/ vehicles to be repaired, which should result in more space being freed up within the existing hardstanding area to facilitate visitors / customers parking. There are no specific car parking standards outlined for this type of development within the County Development Plan¹. On the day of my site inspection, I observed two staff working on-site and I note provision for 6 p.e. within the proposed wastewater treatment system. On this basis, I consider the staffing levels to be within this range and a further requirement for 1 / 2 visitors at any one time. I, therefore, consider that there would be sufficient availability of spaces to facilitate staff and visitor car parking for the proposed development on the appeal site.

- 7.2.4. On the basis of the above, I am satisfied that the width of the adjoining public roadway is sufficient to cater for the level of traffic generated by the existing commercial garage and that the proposed extension would result in any significant increase in traffic generated. I also note that no objections were raised by the Area Engineer of Kerry County Council in relation to roads matters. In conclusion, I am satisfied that the proposed extension would be capable of being accessed satisfactorily and that the parking arrangements would, likewise, be satisfactory.

7.3. Wastewater treatment and disposal

- 7.3.1. It is proposed to replace the existing septic tank and associated soak away with an improved wastewater treatment system and percolation area. A Site Characterisation Form was submitted with the planning application, and I have had regard to same.
- 7.3.2. The site is located within an area that has an aquifer category of 'Locally Important – Bedrock which is Moderately Productive only in Local Zones', and with a vulnerability described as 'High'. This represents a GWPR of R1 under the EPA Code of Practice (2021). According to the Response Matrix (Table E1 of the CoP), onsite treatment systems are acceptable and, where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock and the likelihood of microbial pollution is minimised. In this case, there is a public water supply in the area.
- 7.3.3. The Site Characterisation Form submitted with the application confirms that a trial hole was dug at a depth of 2.1m on the site and that bedrock was not met. The water

¹ P.221, Table 1, Section 13.5 Parking, Kerry County Development Plan 2015-2021 (as extended)

table was encountered at a depth of 2.1m. T-values of 21 (subsurface) and 16.58 (surface) were found which, combined with the trial hole results, indicates that a conventional septic tank and percolation area may be suitable.

- 7.3.4. Given the demonstrated suitability of the site for a septic tank and percolation area, I consider that the proposed development is acceptable. I further note that the new wastewater treatment system would comprise an upgrade to an existing septic tank that is already operating on the site. I do not, therefore, consider that the proposed development would present a significant risk to groundwater pollution or be prejudicial to public health.
- 7.3.5. Having regard to the above, I am satisfied that it has been demonstrated that the site can accommodate the proposed wastewater treatment system, would not result in an increased concentration of individual wastewater treatment systems in the area as it is replacing an existing septic tank and soak away, and that permission should be granted.

7.4. **Other issues**

Design and layout

- 7.4.1. As stated earlier in this report, the development comprises a 294m² extension to the existing 740m² garage / unit and a new hardstanding area. The proposed extension to the building and associated hardstanding area are to be sited entirely to the rear / north of the existing building on the site and this area is not visible from any public view. A new 2.4m high boundary fence is proposed along the entire perimeter of the extended site. This fence will be screened by a wild privet hedge also along the entire boundary.
- 7.4.2. Objective ES-28 of the County Development Plan specifies in relation to economic development in rural areas that all measures are taken to assist integration into the landscape, that appropriate boundary treatment and means of enclosure are provided and that any areas of outside storage proposed are adequately screened from public view.
- 7.4.3. Having regard to the above, I am satisfied that it has been demonstrated that the site can accommodate the proposed extension, would not result in a negative visual impact in this rural area, and that permission should be granted.

Residential amenity

- 7.4.4. The Third Parties have raised no issues in relation to nuisance from dust, noise or light pollution. On the day of my site inspection, I observed that all work was being carried out inside of the existing building and I am satisfied that significant issues in relation to dust, disturbance, and/or noise pollution do not present on the site and that the proposed extension for storage purposes would not have any significant impact on the residential amenity of the area. I, therefore, conclude that the proposal would afford a satisfactory standard of amenity to the existing residents, and it would be compatible with the pattern of development in the area.

Enforcement Proceedings

- 7.4.5. In relation to the issue of an alleged ongoing unauthorised use(s), there is no record on file of enforcement proceedings by the Planning Authority. I also 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.

7.5. **Appropriate Assessment**

The closest European sites is Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site code: 000365) located approximately 770m to the northwest and 900m to the southwest of the appeal site. There is no known hydrological link to the river or the SAC. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

8.0 **Recommendation**

I recommend that planning permission should be granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the design, scale and layout of the proposed development, its relationship to surrounding properties, to the existing commercial garage use on the site and the pattern of development in the area, it is considered that subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15th day of February 2022, 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>The extension permitted herein shall be used as a storage area associated with the existing commercial garage use only.</p> <p>Reason: In the interest of clarity and traffic safety.</p>
3.	<p>The external finishes of the proposed extension shall be the same as those of the existing building in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>

4.	<p>All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.</p> <p>Reason: In the interest of traffic safety and to prevent pollution.</p>
5.	<p>The landscaping scheme shown on drawing no. 21-053-03, as submitted to the planning authority on the 15th day of February 2022 shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity.</p>
6.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 6th day of October 2021 and the 15th day of February 2022, and in accordance with the requirements of the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from its installation and thereafter shall be kept in place at all times. Signed and dated copies</p>

	<p>of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Within three months of the installation of the treatment system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0900 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>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.</p>

	<p>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.</p>
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Liam Bowe
Planning Inspector

6th July 2022