



An  
Bord  
Pleanála

## Inspector's Report ABP314080-22

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<b>Development</b>	Construct a dwelling
<b>Location</b>	Lartigue Lane, Ballybunion, Co Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	21/1466.
<b>Applicant(s)</b>	Noel and Ellen Courtney.
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Nicola and Eoin Cashman.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	2 <sup>nd</sup> August 2023.
<b>Inspector</b>	Ann Bogan.

## 1.0 Site Location and Description

- 1.1. The site is located on the west side of Lartigue Lane off Lartigue Road, Ballybunion, Co Kerry. There are existing two-storey semi-detached and detached houses on the east side of Lartigue Lane and nearby to the south, three two storey houses under construction on adjoining sites immediately to the south, and a mix of dormer and two storey houses to the north. There is a storage shed immediately adjoining the site to the west and a detached dormer dwelling (the appellants) to the north of the site. The site is relatively flat and is a 'backland' infill type plot 0.03ha in area with water and sewerage services available.

## 2.0 Proposed Development

- 2.1. The development consists of a two-storey dwelling with a north-south orientation, with the side of the house facing east onto Lartigue Lane and front elevation facing south. It is 188sqm in area with an 8.8m ridge height. The applicants are stated to be the legal owners of the site.
- 2.2. Further information was sought requesting drawings showing location of surrounding dwellings and elevations and sections of proposed house relative to dwellings to the north and south. Applicants were also requested to reorient the dwelling to avoid overlooking of nearby development and provide for a minimum of 22 m between adjacent first floor windows.
- 2.3. Revised drawings were received which re-orientated the house so that the front elevation faces east, the house has been reduced in size, windows at first floor in the side elevations have been omitted and the house has been moved further to the north so as not to overlook houses to the east.
- 2.4. Clarification of further information issued following a submission referring to a legal agreement requiring a separation distance between any new development on the site and the boundary wall of the house to the north (appellant's house). A revised site layout drawing was submitted repositioning the proposed dwelling to be 9m from the boundary wall of the house to the north.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to 11 conditions. These are mainly standard conditions. Condition No 4 'de-exempts' certain development within the curtilage of the dwelling which would normally be exempt from planning permission, in the interests of the amenities of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

##### Planning Report Jan 2022:

The planning officer accepted the principal of development of a house on the serviced infill plot and recommended further information be sought re impact of the proposal on adjacent development.

Concluded the proposal is not one which requires EIA screening as no real likelihood of significant effects on the environment and that AA is not required due to nature of the development and distance from European sites.

##### Second Planning Report (undated)

Clarification of further information recommended re submission on legal requirement of separation distance from adjacent property

##### Final planning report dated 16 June 2022

The Planning Officer concluded: 'Having regard to the infill and serviced nature of the proposed site and existing development in the area it is considered that the proposal for a dwelling house can be considered favourably' and recommends permission subject to conditions. The report recommends a condition requiring omission of a front elevation window and its replacement by roof lights to protect residential amenities of house to the east. This condition was not included in the decision to grant permission. Other than this omission, with the decision and attached conditions. are in accordance the Planning Officer's report. and recommendation.

### 3.2.2. Other Technical Reports

None on file

### 3.3. Irish Water – no objection

### 3.4. **Third Party Submission**

A submission was received (14<sup>th</sup> April 2022) from Ger O’Keeffe, agent on behalf of the owners of the adjacent house to the north of the site, following the drawings submitted by way of further information:

- Previous drawings showed wall of proposed house 10.5m from rear wall of their property. Revised drawings show house 7m from their boundary.
- They understand a legal agreement from 2017 requires any development on the site to be at least 9m from their property boundary.
- Proposed development would be detrimental to their visual amenity and devalue their property.
- Do not object to the development in principle but consider the proposed development to be excessive in scale. Smaller scale dormer type dwelling would be more appropriate.

A letter sent to Planning Authority from Fitzgerald solicitors acting for above, dated 17<sup>th</sup> May 2022, indicating that a legal agreement exists which fully restricts development on the proposed site and submitted that planning permission should not be granted.

## 4.0 **Planning History**

No recent history on this site.

Adjoining plot to south: 21/1149 Ashker Ltd granted permission by Kerry County Council to construct three two-storey dwellings, one detached and two semi-detached with vehicular entrances and connections to services

## 5.0 Policy and Context

### 5.1. Development Plan

#### **Kerry County Development Plan 2022-2028**

Section 4 Towns and Villages includes an objective to support development of infill lands for housing development:

*KCDP 4-27 Prioritise the regeneration of underused town centre and brownfield / infill lands in order to achieve the sustainable delivery of new housing within the existing urban footprint of settlements in the County.*

#### **Listowel Municipal District Local Area Plan 2020-2026**

Site is located within the development boundary of Ballybunion on land zoned R2 - existing residential in the LAP.

### 5.2. Natural Heritage Designations

Lower River Shannon SAC 002165

### 5.3. EIA Screening

- 5.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Summary of appeal grounds submitted by Ger O'Keefe, agent, with accompanying letter from solicitor, on behalf of appellants:

- Appellants are owners of house immediately to the north of planning application site. They state that Askher Ltd are the registered owners of the subject site and as part of the sale of the site by the previous owners both parties entered into a restrictive covenant to effectively agree not to develop the subject site.
- Application form showed applicants as registered owners of site, no letter from Askher giving them permission to apply. They note the Planning Officer's conclusion that applicants have stated they are the owners of the site and this was considered sufficient grounds to make decision on application. Appellants question whether applicants have sufficient grounds to make the application.
- They note that applicant's agent stated they understood that the agreement required that Ashker not build on the section of site 9m from the adjacent boundary and applicants were happy to comply with this exclusion. However, appellants state that it is clear from the Deed of Conveyance and Map attached that the restrictive covenant applies to whole site.
- Condition 3a of the decision of the Planning Authority states the proposed dwelling house shall be in accordance with the design drawings submitted on 8<sup>th</sup> March. Design drawings of 8<sup>th</sup> March clearly show dwelling 7m from the boundary off appellant's property, in breach of agreement between Ashker and previous owners being 9m from adjacent property.
- Proposed house would dwarf appellants' house in bulk, mass and size.
- Erection of two storey dwelling 7m from rear boundary with ridge height of 9.1 metres would have a detrimental impact on the visual amenity of appellants' property and would result in devaluation of their property and would not be in keeping with proper planning and sustainable development of the area.
- Correspondence enclosed from appellants' legal advisors, stating the applicants have no legal right to make the planning application. It includes details of the covenant and indicates that the applicants are still bound by the covenant not to complete any development on the site, even if planning permission is granted.

## 6.2. Applicant Response

Response received from Bailys Solicitors on behalf of applicant

- Distance of proposed house from Appellants property is 9m not 7m, as shown in drawings submitted to Kerry County Council
- Discussions took place between Applicants and Appellants and latter confirmed they were satisfied with 9m setback and Applicants revised drawings to accommodate this set back
- Kerry Co Council granted planning permission for a two-storey house in an Estate in which all of the houses are also two-storey houses
- Appellants see no basis for allegation that a grant of planning permission for the development would devalue Appellant's property.
- The position regarding the restrictive covenant as outlined by Appellants' solicitor is essentially correct, but it is not a matter for the Local Authority or An Bord Pleanala to involve themselves in. Their function does not extend to deliberation on legal matters
- Letter from Applicants' solicitor to Appellants' solicitor enclosed, requesting inter alia Appellants to agree to the 9m setback, to which they received no reply.

## 6.3. Planning Authority Response

- No response

## 6.4. Observations

- None

## 6.5. Further Responses

- None

## 7.0 Assessment

7.1. Having examined the application details, the appeal submission and response by applicant, having inspected the site and having regard to relevant and local policies and guidance, I consider the main issues in this appeal are:

- Principle of the development
- Protection of residential amenities
- Appropriate Assessment screening

I consider the legal matters raised in the submissions to be outside of An Bord Pleanála's remit and are matters to be resolved between the parties involved.

### 7.2. Principle of the development

7.2.1. The development consists of construction of a dwelling house on an infill 'backland' site within the built-up area of Ballybunion. The area is zoned 'existing residential' and water and sewerage services are available and I consider access is via Lartigue Lane to be acceptable. The Kerry County Development plan via Objective KCDP 4.7 prioritises regeneration of underused town centre and brownfield / infill lands in order to achieve the sustainable delivery of new housing. I am satisfied that the principle of a dwelling on the site is acceptable.

### 7.3. Protection of residential amenities

7.3.1. Lartigue Lane is an area of mainly two storey semi-detached and detached dwellings constructed on 'backland' sites. Adjacent properties fronting onto Lartigue Road and backing on to properties on Lartigue Lane consist of a mixture of dormer and two storey houses.

7.3.2. The proposed two-storey house was initially shown as oriented north-south but following a further information request, revised drawings submitted on 8<sup>th</sup> March 2022 showed the house re-oriented east -west, with gable windows at first floor omitted. Its position was further amended by way of further information submitted on 10<sup>th</sup> May 2022 so that it would be 9m from the boundary of the property to the north.

7.3.3. The reorientation and redesign reduced the potential for overlooking of permitted (but unconstructed) two storey houses to the south. I note the house directly to the south is now at an advanced stage of construction and appears to be altered to that



indicated in the planning permission granted, with a reduced depth of back garden. The rear wall of the protruding ground floor section is approximately 2m from the boundary of the proposed site and will be 7m from the side elevation of the proposed dwelling. As there are no windows proposed in the side elevation and a two high wall is proposed along the eastern boundary, I am satisfied that the proposed development will not result in overlooking or be injurious to the amenity to the properties to the south.

- 7.3.4. The proposed dwelling is shown in drawing submitted 10th may 2022 positioned 9m from the boundary of the adjacent property to the north and circa 24m from the rear of the existing house, with no windows in side elevation and 2m boundary wall. The existing wall and hedging on the boundary of the house to the north also provide screening from the south. I am satisfied that overlooking of the adjacent house or garden will not occur and the distance between the houses will ensure that the height and bulk of the proposed house is not unduly overbearing or seriously impact on residential amenity.
- 7.3.5. The front elevation of the proposed dwelling fronts on to Lartigue Lane and partially overlooks the front elevation of a house on the opposite side of the street from a distance of circa 16m. I consider this is acceptable on an infill site in an urban setting and is unlikely to detract from residential amenities.
- 7.3.6. Overall, I am satisfied that the proposed dwelling is acceptable in design, and will not seriously injure the amenities or depreciate the value of existing residential development in the area.

#### 7.4. **Appropriate Assessment Screening**

- 7.5. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of the receiving environment as a built-up urban area and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

## 8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the proposed development subject to conditions.

## 9.0 Reasons and Considerations

Having regard to the location of the development on a serviced infill site in a 'backland' area within the existing built up area of Ballybunion, the nature and scale of the proposed development, the pattern of development of the area, and Objective KDC 4.7 of the Kerry County Development Plan 2022-2028 which prioritises the development of infill sites in urban areas for housing, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities or depreciate the value of property in the vicinity and therefore would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted received on 8<sup>th</sup> March 2022 and on 10<sup>th</sup> May 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed dwelling house shall be positioned on the site as shown in site layout drawing received on 10<sup>th</sup> May 2022</p> <p><b>Reason:</b> In the interests of clarity</p>

3.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000 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>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way

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. Ann Bogan  
Planning Inspector

11 August 2023