



An
Bord
Pleanála

Inspector's Report ABP-314560-22.

Development	Retain dwelling, garage and splayed entrance as constructed.
Location	Barleymount West, Killarney, Co. Kerry, V93 Y79H.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	22/101.
Applicant(s)	Michael O'Neill & Teresa Foley.
Type of Application	Retention.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Sinead Flynn.
Observer(s)	None.
Date of Site Inspection	20/03/2023.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Barleymount East, Killarney, approximately 6km to the north west of Killarney town centre. The site is accessed via the local road network and ultimately to the south of a cul-de-sac road which provides access for a number of one-off houses and farm land.
- 1.2. The subject site has a stated area of 0.203ha and is currently occupied by an existing storey and a half dwelling, which is located almost centrally on the site, and a small steel shed to the east of the house. Planning permission was granted for the existing house on the site under PA ref. 16/1189. This house was constructed and was occupied on the date of my site inspection.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices to:
 - (A) Retain dwelling house as-constructed within revised site boundaries (previously granted planning permission under planning reg. No.16. 1189),
 - (B) Retention permission to retain detached domestic garage,
 - (C) Retention permission to retain as-constructed splayed site entrance and all associated site works in accordance with all plans and particulars submitted,all at Barleymount West, Killarney, Co. Kerry, V93 Y79H.

- 2.2. The application was lodged on the 4th day of February 2022 and included the following documents:

- Plans and particulars
- Completed planning application form
- Supplementary Application Form
- Cover letter

The cover letter advises that the as-built dwelling has similar dimensions to the permitted dwelling, with an overall increase of 37.5m². In addition, a 'birds-mouth'

roof was added over the first-floor bedroom 1 and 1 additional velux window was added to the front facing roof.

2.3. Further information was submitted by the applicant on the 6th day of July 2022 which advised that the applicants were committed to completing all works associated with the planning permission granted and had expected to complete the landscaping plan in 2020. With regard to compliance with the cited conditions noted in the FI request, the following is noted:

- Condition 14 – landscaping shall be completed in the next growing season and the roadside boundary shall be reinstated to a maximum of 1m above road level.
- Condition 9 - The splayed walls as built are 900mm in height. the 4 pillars are marginally above the 1m height requirement. The applicants are willing to lower the pillar height to satisfy the 1m height requirement.
- Condition 7(b) – the house was first occupied in July 2018. A S47 Agreement is also enclosed.

2.4. In addition to the above, the response to the FI request also includes a rationale for the location of the detached domestic garage and advising that the permitted garage of 45.36m² was not affordable. The applicants scaled down the structure and decided to install a steel type garden shed with a reduced floor area of 22.8m². They advise that they were incorrectly informed that this was exempted development.

2.5. In relation to the objection on the file, the applicant advises that it was never their intention to upset any neighbours. Additional screening will be provided to the shed, but due to existing financial difficulties, they are not in a position to relocate the entire structure.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission and the County Development Plan policies and objectives. The report also includes an EIA Screening and AA Screening assessments.

The planning report notes that there are minor amendments from the previous grant of planning permission for the house, and that other than a lawn, no landscaping has taken place. It is further noted that there is no roadside boundary in place. In terms of the third party submission, the report notes that there is no onus on the Planning Authority to protect the views from private dwellings.

Further information is required with regard to compliance with previous conditions of planning permission as they relate to Condition 14 – landscaping, Condition 9 – front boundary wall and wing walls and Condition 7(b) – S47 Agreement.

Following receipt of the response to the FI request, the final Planning Officers report notes the submission from the applicant and concluded that the FI constituted significant further information and further public notices were submitted. The report notes the content of the third-party comments on the further information response. It is advised that the access road is not on the ‘views and prospects’ maps as set out in the CDP, and it is not a protected view. The report concludes that the location of the garage does not seriously impact the residential amenities of houses located across the road.

The report concludes that the proposed development is acceptable, and the Planning Officer recommends that permission be granted for the proposed development. This recommendation formed the basis of the Planning Authority’s decision to grant planning permission. The Board will note that the Case Planners report was endorsed by the SEE.

3.2.2. Other Technical Reports

Site Assessment Unit: No objection.

3.2.3. Prescribed Bodies

Irish Water: No objections

KNRDO: No observations to make.

3.2.4. Third Party Submissions

There is 1 third party submission noted. The issues raised are summarised as follows:

- A big part of the objectors home is the beautiful scenery. The views have been jeopardised by the garage to the east of the house, which directly blocks the only remaining view of the lakes for their home.
- When the original house was built, the objectors discussed their concerns with the applicant and the plans were to locate the garage to the west of the house.
- They raised concerns about the garage when the foundations were being laid but the applicants continued with the build.
- The access to the site is not in the approved location. There is no objection to the location of the entrance as constructed but it is requested that conditions be included to limit the height of the wall to 1m and no allowable obstruction (plantation or otherwise) be allowed on the east side of the house to retain the lake views.

The objection includes photographs.

Following receipt of the response to the FI request, a further letter of objection was submitted by the above party. The submission is summarised as follows:

- Financial difficulties are not a valid argument for not complying with planning permission. The location of the garage has a direct negative financial impact on third party property.
- Being incorrectly informed of exempted development is not a valid justification for non-compliance with planning permission.
- The original garage was designed to be located on the west side of the house and is more at risk to strong winds in its current position on the site.

- The location of the soakpit or effluent area to the west would not pose an obstruction.
- Children using the garage to play in is not a valid excuse for non-compliance with planning.

It is requested that permission be refused and the views from the objectors home be restored.

4.0 Planning History

PA ref. 16/333: Permission granted to construct a new dwelling house and domestic garage with mechanical aeration unit and soil polishing filter.

PA Ref. 16/1189: Permission granted for a change of design of dwelling house previously granted permission under Planning ref. 16/333, subject to 15 conditions.

5.0 Policy and Context

5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The Board will note that the subject application was considered under the Kerry County Development Plan 2015. In the interim, the Board will note that the Elected Members of Kerry County Council adopted the Cork County Development Plan 2022-2028 at a full Council Meeting on the 4th of July 2022. The Plan came into effect on the 15th of August 2022. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site.
- 5.1.2. Chapter 5 of the CDP deals with Rural Housing and the site is located within an area which is identified as being a rural area under significant urban influence. In terms of landscape designations, the area is not identified as being within a visually sensitive area and there are no protected views or prospects within the vicinity of the site.

5.2. Natural Heritage Designations

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Castlemaine Harbour SAC (Site Code: 000343), which is located approximately 1.8km to the north of the site. The Killarney National Park, MacGillicuddy Reeks and

Caragh River Catchment SAC (000365) and the Killarney National Park SPA (Site Code: 004038) are located approximately 4.7km to the south of the site. The Castlemaine Harbour SPA (Site Code: 004029) lies approximately 12.4km to the west and the Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 12.8km to the north of the site.

5.3. EIA Screening

5.3.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development comprises the retention of works to a previously permitted dwelling, including site boundaries and the locating of a domestic garage, in a rural area, on a site of 0.203ha and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.3.1. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a third-party appeal, from Ms. Sinead Flynn, against the decision of the Planning Authority to grant planning permission for the proposed development. The appeal reflects the issues raised during the PAs assessment of the proposed

development and issues are raised in terms of non-compliance with conditions of the original grant of planning permission. The appellants objections are summarised as follows:

- The construction of 'garage dwelling' without permission on the east side of the house.
- The vehicular entrance in terms of location and height of wing walls.
- Interference with the natural beauty and landscape of the area by constructing the 'garage dwelling' at its current location.
- Impacts on heritage, landscape and the environment (flora and fauna) by demolishing the original roadside boundary. Six years later, the boundary has not been reinstated.
- False / insignificant information/reasons in the retention application.

There are a number of enclosures with the appeal document, including the appellants previous submissions to Kerry County Council. It is submitted that the appellant would like the applicant to dismantle the garage and relocate to the west of the site where it was originally proposed and that a condition be included in any grant of permission that the roadside boundary / hedge be limited to a maximum of 1m in height to ensure that the areas landscape, heritage and natural beauty is retained.

6.2. First Party Response to Third Party Appeal

The first party, through their agent C. Lonergan Consultancy, submitted a response to the third-party appeal. The response submits that the appeal is mainly concerned with the location of the garage blocking views from their property and the proposed new roadside boundary. The response is summarised as follows:

- Individual property owners do not have a legal right to a view.
- The subject site is not zoned as a visually sensitive area, nor does it have any protected views and prospects under the current CDP 2022-2028.

- It is not considered that the location of the garage seriously impacts the residential amenities of houses located across the road to the north, including the appellants property.
- The decision of the PA in terms of the roadside boundary, wing walls and pillars is considered a reasonable compromise.
- It is noted that the appellant noted no objection to the position of the entrance or to the dwelling house as constructed. These issues are included in the appeal to the Board.
- The further information response to Kerry County Council was genuine and they have now secured funding to complete the works detailed in the decision to grant retention permission.

It is requested that the Board uphold the decision of the Planning Authority.

6.3. Planning Authority Response

The Planning Authority submitted a response to the third-party appeal noting that the relevant issues have been addressed in the Planners reports.

6.4. Observations

None.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site including the planning history of the subject site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Other Issues
3. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The proposed development comprises the retention of a house as constructed together with the retention of a domestic garage and splayed entrance as constructed on a site at Barleymount West, Killarney, Co. Kerry. Planning permission was granted for the construction of the house on the site under PA ref: 16/1189 to the current application. The principle of the residential use of the site has been established.
- 7.1.2. In terms of the as constructed amendments to the house, I consider that they are minor. The increase in floor area is noted to be 37.5m² which is not significant in that it does not form an additional room or significantly affect the appearance of the permitted house. I do not consider that the insertion of a velux window, significantly or materially affects the overall design of the as permitted house on the site. As such, I have no objection to the retention of the amendments to the house as constructed.
- 7.1.3. In terms of the domestic garage, the Board will note that this element constitutes the primary objection of the third-party appellant. Planning permission was granted for the construction of a domestic garage to the west of the house. The permitted garage was to be constructed in block with a finish to reflect that of the house, and with a floor area almost double that of the shed the subject of this retention appeal. The appellant has submitted that the retention of the steel shed at the current location has a significant impact on their amenities due to the blocking of views towards the lakes and has an impact on the wider landscape in this area. I would acknowledge the submission of photographs by the appellant which depicts the impact of the shed in its current location from their home. I would note that there is no objection to the size, colour or shape of the shed and the objection relates solely to its location to the east of the house.
- 7.1.4. While I acknowledge that the location of the shed represents an impact in terms of views from the appellants property, the Board will note that this area of County Kerry, notwithstanding the scenery in the area, is not identified as a visually sensitive area. There are no protected views or prospects as detailed in the current Kerry County Development Plan and the road from which the site is accessed, is noted to be a cul-de-sac. As such, it is lightly trafficked and would not comprise a main tourist route

through the County. In terms of impacts from the appellants home, there is no provision in the Planning legislation which protects private views over private property. Overall, I do not consider that the scale of the domestic garage to be retained is such as to warrant a refusal of planning permission due to visual impacts. I have no objection to the retention of this element of the development.

- 7.1.5. With regard to the retention of the splayed entrance and wing walls, the Board will note that as constructed, they do not comply with the conditions of the parent permission. The permission granted required that the entrance be located towards the eastern end of the site and condition 9 of the decision to grant required that the existing roadside boundary be retained in full except for that necessary to provide the entrance. The wing walls were to be constructed in sod and stone or native stone and were to be erected to a height of not more than 1m.
- 7.1.6. In this regard, I note that the entire front boundary was removed and the entrance to the site relocated to a more west of centre location on the roadside boundary. The wing walls comprise plastered block walls which rise to a height of 900mm, with the piers noted to be marginally above the 1m height requirement. I have considered the assessment of the Planning Authority Planner in relation to this element of the application, together with the submissions from the applicant and the appellant. I would be satisfied that the relocation of the entrance as constructed does not represent any roads or traffic hazard and as such, I have no objection to its retention as constructed.
- 7.1.7. I would not consider that the overall height of the wing walls or pillars are such as to warrant a visual impact in the wider landscape, and I concur with the provisions of recommended condition 4 in the Planning Authority's notification of decision to grant retention permission which requires that the wing walls be clad in native stone as well as the reinstatement of the sod and stone roadside boundary within six months of the decision to grant. I would also note the appellants request to restrict the height of any plantation, construction or otherwise along the roadside boundary of the site, to ensure the areas landscape, heritage and natural beauty is retained as much as possible. I would not consider this to be necessary. A condition should be included which restricts any further exempted developments within the site and details of the landscaping plan shall be submitted for agreement with the Planning Authority prior to being implemented.

7.2. Other Issues

7.2.1. Water Services

The Board will note that permission has been granted for all water services associated with the residential development at this site. I have no objections to the retention of the cited works in this regard.

7.2.2. Roads & Traffic

The Board will note that permission has been granted for the residential development at this site. While works to be retained include the location of the access to the site, I have no objections to the retention of the cited works in terms of roads and traffic matters.

7.2.3. Third-party Issues

The Board will note that the third-party appellant primary objection to the retention of the domestic steel garage relates to the location of the shed on the site, rather than the principle of the shed in and of itself. I have had regard to all matters raised by the appellant, including Ms. Flynn's submissions to Kerry County Council, and I would conclude that the impact on views from her home through the applicant site towards the lakes and mountains are the primary objection. The Board will note that the Planning legislation does not provide a right to views over private property and that the subject site is not located within an area which has been identified as visually sensitive. There are no identified views and prospects indicated in the current County Development Plan, 2022-2028, and as such, I do not consider that the retention of the domestic shed will significantly impact on the existing residential amenities of adjacent properties, such as to warrant a refusal of permission.

I also note that the appellant has referred to a 'garage dwelling' on the site. I am unclear as to what this description implies, but I do not consider that the steel shed is to be used as a dwelling. A condition regarding the use of the shed could be included to exclude any confusion, should the Board be so minded.

7.2.4. Development Contribution

The subject development is not liable to pay development contribution.

8.0 Appropriate Assessment

- 8.1.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any Natura 2000 site and the development the subject of this application and appeal is not directly connected with or necessary to the management of a European site. The applicant did not submit an AA Screening or Natura Impact Statement.
- 8.1.2. The closest Natura 2000 site is the Castlemaine Harbour SAC (Site Code: 000343), which is located approximately 1.8km to the north of the site. The Killarney National Park, MacGillicuddy Reeks and Caragh River Catchment SAC (000365) and the Killarney National Park SPA (Site Code: 004038) are located approximately 4.7km to the south of the site. The Castlemaine Harbour SPA (Site Code: 004029) lies approximately 12.4km to the west and the Slieve Mish Mountains SAC (Site Code: 002185) lies approximately 12.8km to the north of the site.
- 8.1.3. I am satisfied that the above sites can be screened out in the first instance, as although located within the zone of significant impact influence, the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the identified site is reasonably foreseeable. I am satisfied that the potential for impacts on the identified Natura 2000 sites can be excluded at the preliminary stage.
- 8.1.4. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is generally reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site.

9.0 Recommendation

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

10.0 Reasons and Considerations

Having regard to the nature and scale of the development the subject of this retention application, the provisions of the current Kerry County Development Plan and having regard to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or general amenities of the area or of property in the vicinity, would not be detrimental to the character of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6th day of July and the 22nd day of July 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.

Reason: In the interest of clarity.

2. All relevant conditions attached to the parent permission, PA registration reference 16/1189 shall be strictly adhered to.

Reason: In the interest of clarity and the proper planning and sustainable development of the area.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

4. The front boundary shall be reinstated to a maximum height of 1m and shall consist of sod and stone or native stone. The constructed wing walls and piers shall be clad in native stone.

Full details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, and all works to the roadside boundary shall be carried out within six months of the date of this permission.

Reason: In the interest of visual amenity.

5. The site shall be landscaped in accordance with condition 14 of planning permission 16/1189 and the scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any new planting shall be carried out in accordance with the agreed scheme and shall be completed within six months of the date of this permission.

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.

Reason: In order to screen the development, in the interest of visual amenity.

A. Considine
Planning Inspector
04/04/2023