



An
Bord
Pleanála

Inspector's Report ABP-314731-22.

Development	Retain garage.
Location	Reen, Killorglin, County Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	21/1457.
Applicant(s)	Debbie O'Sullivan.
Type of Application	Retention Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Michael O'Connor.
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 a rural area, approximately 1.6km to the north west of the centre of Killorglin, County Kerry, and approximately 500m outside the settlement boundary. The site lies to the south of the county road and is occupied by a former rural Council house, on a site that has a stated area of 0.152ha. The existing house is a single storey house and there is a metal garage structure located to the eastern side of the house.

2.0 Proposed Development

2.1. Permission is sought, as per the public notices to retain a garage, all at Reen, Killorglin, County Kerry.

2.2. The application included the following documents:

- Cover letter.
- Plans and particulars.
- Completed planning application form.

2.2.1. Following a request for further information, the applicant advised that the garage to be retained is for domestic purposes. The response also included a report relating to the condition of the waste water treatment system. This report concludes that the existing septic tank system, installed in the 1970s is in working order and is adequate to serve the house into the future.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the retention of the garage subject to four conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical report, third party submission, planning history of the site and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening and EIA assessment.

The initial Planning Report concludes that further information is required with regard to the on-site WWTP and the use of the garage. The report also notes that the proposed development is acceptable in terms of visual impact, residential amenity and road safety / traffic.

Following the receipt of the response to the FI request, the final planning report recommends that retention permission be granted subject to four conditions. This recommendation formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Site Assessment Unit: The report requires that further information be sought requiring that a certificate from a suitably qualified person be submitted confirming that the existing on-site WWTP is fully compliant with the original grant of permission and the requirements of SI No. 223 of 2012 and is capable of treating and disposing of wastewater from the development. This will require a detailed survey of the system and a map confirming the location of the various elements of the system.

Following the submission of the response to the FI, the SAU advised no objection to the proposed development.

3.2.3. Prescribed Bodies

None.

3.2.4. **Third Party Submissions**

There is one third party submission in relation to the subject application from Mr. O'Connor (current appellant). The issues raised reflect those of the Appeal submission and are summarised as follows:

- The development damaged the percolation area and distribution box which have not been repaired and are now redundant.
- The site is liable to flooding due to damage to the existing treatment area and spills into adjacent property.
- Runoff from the garage is not contained within the non-existing soakpit and spills onto adjacent property.
- The location of the garage is not as indicated on the site plan and has encroached on the adjacent boundary to the east.
- The commercial enterprise element of the garage has not been addressed.
- There is a boundary dispute between neighbours.

4.0 **Planning History**

The following is the relevant planning history pertaining to the subject site:

PA ref: 18/357: Permission granted to Geraldine O'Connor to retain the elevational changes made to the existing dwelling house, retain the timber shed and to retain the dwelling house and shed all within revised site boundaries.

PA ref: 86/1273: Permission granted to MI. O'Connor to construct an extension.

5.0 **Policy and Context**

5.1. **Development Plan**

- 5.1.1. The Elected Members of Kerry County Council adopted the Kerry 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 and incorporates the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022, dated

5th December 2022. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site.

- 5.1.2. The subject application relates to the retention of a domestic garage on a residential site in a rural area.

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) and the Castlemaine Harbour SPA (Site Code: 004029) which are located approximately 1.2km to the north of the site.

5.3. **EIA Screening**

- 5.3.1. The proposed development comprises the retention of a domestic garage with a floor area of 54m² on a rural residential site in Co. Kerry. It is therefore considered that the development does not fall within a class of development which would require mandatory EIA. The requirements of section 172(1)(b) of the Planning and Development Act 2000 (as amended), in terms of sub-threshold developments, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

- 5.3.1. Having regard to:

- (a) the nature and scale of the development,
- (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 against the decision of the Planning Authority to grant retention permission for the proposed development. The appeal was submitted by Frank Curran Consulting Engineers Ltd. on behalf of the appellant Mr. Michael O'Connor and is summarised as follows:

- The main difficulty with the grant of planning permission is that the septic tank and soak pit are located adjacent to his boundary.
- The soak pit is not fit for purpose and is causing pollution to ground water and appellants' land.
- The septic tank is a block construction which is no longer acceptable and the soakpit is within 3m of the boundary.

It is requested that permission be refused until the issue with the waste water treatment system is addressed.

6.2. First-Party Response to Third Party Appeal

The first party responded to the third-party appeal through her agent, Frank Coffee Consulting Engineer. The response sets out the background to the case and it is advised that the applicant intends to comply fully with the conditions attached to the PAs grant of permission. The response is summarised as follows:

- The septic tank on the site was constructed by Kerry County Council to serve the house in the 1970s.
- The SAU (Kerry County Council) has deemed the septic tank to be compliant and is adequate to serve the house.
- The DWWTS report submitted following the request for further information notes no evidence of malfunction and no evidence of effluent overflow.
- While the septic tank would not comply with current legislation, the subject retention application does not relate to it and there is no requirement to upgrade it.

- The soakpit has been in place since the mid-1970s and has never given rise to objections or complaints. If there was a case of seepage, the planning legislation is not the relevant legislation to address such nuisance.
- No technical argument or evidence to prove the appellants case that the Septic tank is not fit for purpose has been submitted. Even if he were to prove his case, it has no bearing on this retention application as the septic tank and soak pit do not form part of this application.
- The garage is for domestic purposes.

It is requested that the retention permission be confirmed.

6.3. **Planning Authority Response**

The Planning Authority made no response to the first-party appeal.

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 appeal, and the nature of existing and permitted development in the immediate vicinity of the 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. Third Party Issues
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The Kerry County Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. The development seeks to retain a metal garage, with a floor area of 54m², on a rural residential site approximately 1.6km to the north west of the town of Killorglin. The garage is located within approximately 1m of the eastern boundary of the site and has the roller door facing west towards the house. In terms of the principle of the development, there is no objection to the retention of the garage.
- 7.1.2. The third-party has raised concerns regarding a commercial use associated with the garage. The applicant has advised that the garage is a domestic garage only and no commercial activity occurs there. I am satisfied that this is acceptable.

7.2. Third Party Issues

- 7.2.1. The primary issues arising in the third-party appeal relate to the septic tank and soakpit. I also note the indication that there is a boundary dispute with the applicant. In terms of the septic tank, the Board will note that this did not form a part of the application for retention. The garage, the subject of the retention application, does not include any water services or WC facilities and therefore, will not require any connections to the existing system which was installed on the site in the mid-1970s.
- 7.2.2. I note that the PA requested the submission of a certificate of compliance and a completed Condition Survey Form for the septic tank and soakpit by way of further information during its assessment of the development. The findings of the survey which was carried out concluded that the existing system complies fully with the standards that applied at the time of installation and that the retention of the garage will not affect its continuing operation. The report further concludes that the system is adequate to continue servicing the dwelling as the PE has not increased. Following the submission of the requested report, the SAU (Kerry County Council) concluded with no objection to the retention of the garage and that no particular environmental planning conditions were required.
- 7.2.3. Having regard to all of the information presented, together with my site inspection, I am generally satisfied that there is no evidence of malfunction of the septic tank system. I further note that the garage the subject of this appeal has not been

constructed on the area of the soakpit and, as there are no WC facilities contained within the structure, it has no impact on the loading to the existing system. I therefore conclude that the retention of the garage is acceptable and would not be contrary to the proper planning and sustainable development of the area.

7.3. Other Issues

7.3.1. Roads & Traffic

The garage is located within the boundaries of an existing residential site and will be accessed off the local road via the existing residential access. I have no objections in this regard and having regard to the nominal scale of the proposed development, I am satisfied that no road safety issues arise.

7.3.2. Visual Impacts

Having regard to the nominal scale of the garage, I am satisfied that no visual impacts arise.

7.3.3. Development Contribution

The subject development is not liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

8.0 Appropriate Assessment

- 8.1.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject retention application. The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Castlemaine Harbour SAC (Site Code: 000343) and the Castlemaine Harbour SPA (Site Code: 004029) which are located approximately 1.2km to the north of the site. The development the subject of this retention application and appeal is not directly connected with or necessary to the management of a European site, being the retention of a domestic garage on a rural residential site. I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Castlemaine Harbour SAC and SPA can be excluded given the distance to the sites, the nature and scale of the development.

- 8.1.2. 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 reasonable to conclude on the basis of the information available, that the ecology of the species and / or the habitat in question is not structurally or functionally linked to the proposal site. There is, therefore, no potential impact pathway identified, connecting the designated site to the development site.
- 8.2. Overall, I consider it is reasonable to conclude on the basis of the information available that the retention of the domestic garage would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development, separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

9.0 Recommendation

- 9.1.1. I recommend that permission be granted subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the nature and scale of the development the subject of this retention application, the planning history of the site, 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 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 water services, environment 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 15th day of August 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. The garage to be retained shall be used for private domestic storage purposes only and shall not be used for any commercial, habitation or agricultural uses.

Reason: In the interest of clarity, to restrict the use of the structure to domestic storage only 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.

A. Considine
Planning Inspector
15/04/2023