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| Development | Retention of variations to works at house, permission to repair and re-roof stone ruin and to decommission septic tank and fit new treatment system. | | |
| Location | Bolus, Ballinskelligs, Co. Kerry. | | |
| Planning Authority Ref. | 22/780. | | |
| Applicant(s) | Michael Murphy. | | |
| Type of Application | Retention Permission and Permission. | PA Decision | To Grant Retention Permission and Permission. |
| Type of Appeal | Third | Appellant | Frank Curran. |
| Observer(s) | None. | | |
| Date of Site Inspection | 3 rd January, 2024. | Inspector | Aiden O'Neill |

Context

1. Site Location/ and Description.

The proposed development site is located at an exposed headland, Bolus Head, in the townland of Bolus, to the south-west of Ballinskelligs. Bolus Head rises to c. 390m to the north. The site is accessed via a narrow public cul-de-sac road which is at a higher level (c. 3m) to the north of the site. The access to the site, which is

from the north-east, is gated. The existing dwelling and adjacent ruin are located on a generally level area of the site, which then falls in level by up to c. 4m to the southern site boundary, before falling further to Ballinskelligs Bay to the south. Site boundaries are generally characterised by a small mound with post and wire fence. There is an existing drain along the eastern boundary of the site. There are 4no. other single-storey/single-storey part two-storey dwellings, a ruin, and a stand-alone agricultural shed within 250m of the proposed development site.

The proposed development site, which is irregular in shape, is 0.35ha in area. The existing single-storey part two-storey 'L-shaped' two-bedroom unoccupied and incomplete house is 44m² in area. The dwelling design is a modern take on the traditional farmhouse vernacular, with a part two-storey dormer extension to the south-west and a single-storey extension to the south-east, with sand-cement plaster finish to the walls and slated finish to the A roofs. The front elevation of the dwelling house faces the north-east, with the south-eastern single-storey element benefitting from a picture window to maximise views over Ballinskelligs Bay. The adjacent stand-alone single-storey stone ruin is c. 14m². There is an existing disused septic tank and soakpit serving the house. The application form states that there is an existing connection to a private well located to the north. Landscaping generally comprises a mix of grasses and some rushes.

There are no Views or Prospects applicable to the site or the immediate area. There are no Protected Structures, NIAH structures or Recorded Monuments on the site or in the immediate vicinity. There are 2no. Recorded Monuments in the wider area, including a pair of Standing Stones, KY097-041----, located c. 214m the north-east at a higher level, and a Barracks, KY104-001----, located c. 648m to the south-west at a higher level. The proposed development site is not located in a Flood Zone.

2. Description of development.

The proposed development consists of permission for retention and will consist of permission as follows: (1) Retention permission to retain variations to works at old farmhouse, PL. Ref. 982428 and (2) Permission to repair and re-roof adjacent stone ruin for ancillary use and (3) Permission to decommission existing septic

tank and fit new mechanical treatment unit, intermittent filter and polishing filter at Bolus, Ballinskelligs, Co. Kerry.

The works to be retained include alterations to the permitted roof profile, to include the new dormer window to the south-western extension; omission of velux windows to the north-east and south-west elevations; additional windows to the front elevation; modifications to the window on the south-east elevation; and associated internal alterations. The proposed works include new stone wall repair/reinstatement and new natural slate A roof to the existing ruin; the decommissioning of the existing septic tank; and the installation of new Puraflo wastewater treatment system with Tricel Novo mechanical unit, and gravel distribution layer.

The planning application includes a report on the existing effluent system, stating that it does not meet current regulations and needs to be replaced. A method statement, site assessment and site characterisation form conclude that the site is suitable for the wastewater treatment system proposed.

The application form includes 2no. letters of consent from the current owners of the proposed development site, who were the previous applicant (ABP Ref No. ABP-311489 (PA Ref No. 21/770)), stating that the existing property on site is being sold to the applicant, and that the applicant's uncle has a farm adjacent to the proposed development site.

The applicant's cover letter explains that the applicant has always farmed the Bolus Head land with his uncle, and that his uncle is to pass on the farm to the applicant, but in the meantime, the applicant will continue to farm the land from the proposed development site. The cover letter states that the applicant is from, lives and works in the area, and farms his uncle's adjoining land.

3. Planning History.

The following planning history applies to the proposed development site:

ABP Ref No. ABP-311489 (PA Ref No. 21/770): Permission was refused on 23rd March, 2022, overturning a notification to grant planning permission from Kerry County Council dated 1st September, 2021, to retain and complete variations to

farmhouse and decommission existing septic tank and fit new mechanical treatment.

Permission was refused for the following reason:

Section 3.3.5 of the Kerry County Development Plan 2015-2021 provides that in Prime Special Amenity Areas, it is the policy of the planning authority to confine the renovation or restoration of existing and vacant buildings situated in rural areas to dwellings which are to be occupied by a person as their primary place of residence and who are sons and daughters of traditional landholders, the landholding having been in the applicant's or applicant's family's ownership for a period in excess of ten years while being the location of the principal family residence. This policy is considered reasonable.

Having regard to the location of the site in an area of Prime Special Amenity as identified on Map 12.1p of the development plan, and to the information contained on the file including the recent condition of the structure on the site, it is considered that the development to be retained would not comply with Section 3.3.5 of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission, the Board had regard to the information contained on the file including the recent condition of the structure on the site and considered that the development to be retained would not comply with Section 3.3.5 of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

Note:

Having regard to the location of the site within a rural area not under urban influence and to National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas not under urban influence, seeks to facilitate the provision of single housing in the countryside having regard to the viability of smaller towns and rural settlements, the Board considered that, having regard to the viability of smaller towns and rural settlements, the development to be retained might not comply with National Policy Objective 19. The development might

contribute to the encroachment of random rural development in the area, might militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and might contravene the provisions of the National Planning Framework. The proposed development might, therefore, be contrary to the proper planning and sustainable development of the area.

However, the Board considered this to be a new issue in the context of the planning application and appeal and, having regard to the substantive reason for refusal, decided not to pursue this matter further with the parties.

PA Ref No. 98/2438: Permission was granted on 24th May, 1999 to renovate and extend old dwelling house and install septic tank.

PA Ref No. 97/1674: Outline permission was refused on 9th October, 1997 to renovate and repair existing house and install septic tank to serve same.

PA Ref No. 97/937: Permission was refused on 7th July, 1997 to install a septic tank to serve existing house.

4. National/Regional/Local Planning Policy (see attached)

- The Kerry County Development Plan 2022-2028 was adopted by the PA on 4th July, 2022. It has regard to national and regional policies in respect of rural housing development.
- The key policies are as follows:
- Policy Objective KCDP 5-16 in relation to Other Rural Areas.
- Section 5.5.2.1 of the Plan sets out the provisions of an Occupancy Condition and Section 47 Agreements.
- KCDP 5-19 in relation to rural housing and landscape.
- KCDP 5-20 in relation to an Occupancy Clause.
- KCDP 5-21 in relation to normal planning criteria.
- KCDP 5-22 in relation to design of housing in rural areas.
- KCDP 5-23 in relation to holiday / second homes.
- Section 5.7 in relation to renovation and restoration of existing and vacant buildings in rural areas.
- KCDP 5-25 in relation to the preservation of traditional or vernacular rural houses.

- KCDP 5-26 in relation to re-use of vernacular dwellings and buildings.
- KCDP 5-27 in relation to the restoration and conversion to residential use of disused buildings.
- KCDP 5-30 in relation to vacancy and the efficient use of existing housing stock.
- Sections 11.6.3.1 and 11.6.4 in relation to visually sensitive areas.
- Details of these policies are attached.

5. Natural Heritage Designations

- The proposed development site is located c. 155m, from the nearest Designated Site, the Iveragh Peninsula SPA (Site Code 004154). The proposed development site is also located c. 4km from the Ballinskellig Bay and Inny Estuary SAC (Site Code 000335).

Development, Decision and Grounds of Appeal

6. PA Decision.

The Planning Authority decided to grant permission by Order dated 14th September, 2022 subject to 14no. conditions.

The First Schedule states that having regard to the nature, extent and location of the proposed development and the planning history on site, and to any submissions received with the application, it is considered that, subject to compliance with conditions, the proposed development would not be visually obtrusive, would not seriously injure the amenities of the area, or be otherwise contrary to the proper planning and sustainable development of the area.

Condition no. 3(a) requires that the proposed development shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or his heirs, and shall remain so occupied for a period of 7 years, unless consent is granted for its occupation by other persons who belong to the same category of housing need as the applicant. A written agreement under S47 of the Planning and Development Act, 2000, as amended, is required.

Condition no. 4(a) states that the use of the proposed development shall be as a primary permanent all year round private residence. 4(b) states that the proposed development shall not be used as a holiday home or second home.

Condition 14 states that the re-roofed and repaired stone ruin shall be used for domestic storage purposes only and not for any commercial or agricultural uses.

7. Third Party Appeal.

The Third Party appeal sets out the following grounds:

- Application Form:
 - The application form is incorrectly filled out. The applicant and his wife own, and reside in, a house in Cahersiveen. The applicant states that he lives with his uncle in Bolus but he resides in Cahersiveen. A copy of a Folio (KY16176) is attached to the appeal to confirm that the applicant is the freehold owner of the property since 17th February 2005.
- County Development Plan
 - If the applicant is the owner of an existing property, he cannot comply with objective KCDP5-20.
 - There is a condition restricting the use of the property to a permanent residence, but this will be difficult to enforce.
 - The dwelling house will be used as a second home or holiday home.
- Use of Building
 - The building was previously used for agricultural purposes before the unauthorised works were carried out and would have been classified as an agricultural building. A photo (undated) is attached to this effect.
- The appeal includes a copy of the original submission made by the appellant.
- The appellant states that permission should not have been granted.

8. PA Response

- None on file.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the modest nature and scale of development, and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Having examined all the application and appeal documentation on file, and having regard to relevant policy, I consider that the main issues which require consideration in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

2.2. The main issues are as follows:

- Compliance with the Kerry County Development Plan 2022-2028
- Use of the existing building

2.3. Compliance with the Kerry County Development Plan 2022-2028

2.3.1 The proposed development consists of the retention of variations to an incomplete and unoccupied house in a visually sensitive and exposed rural area to the south-west of Ballinskelligs village in Co. Kerry. The proposed development will also

consist of the repairs to an existing stone ruin, as well as new roof, and the decommissioning of an existing septic tank and the provision of a new treatment system.

- 2.3.2 While the variations to the dwelling to be retained appear to be the same as those presented in the most recent application, granted by Kerry County Council, but refused by the Board on appeal (ABP Ref No. ABP-311489 (PA Ref No. 21/770)), I consider these to be acceptable. The variations to be retained are not out of character with the rural area in which the dwelling is located, and they do not negatively impact this visually sensitive location. In the event that the Board is minded to grant planning permission, a condition should be attached requiring a full set of as constructed drawings, as the drawing submitted of the north-west elevation of the dwelling to be retained does not align with what is constructed on site. The repair and re-roofing of the adjacent ruin and its proposed ancillary use is also acceptable. The decommissioning of the existing septic tank and the installation of a new treatment system is also acceptable, although, in the event that the Board is minded to grant planning permission, a condition should be attached requiring the removal of the decommissioned septic tank.
- 2.3.3 The Board refused permission on the basis that the proposed development, located in a Prime Special Amenity Area, did not comply with Section 3.3.5 of the Kerry County Development Plan 2015-2021 as the applicant (the current owner of the proposed development site) was not a son or daughter of traditional landowners, and the landholding was not in the applicant or applicant's family for a period in excess of ten years while being the location of the principal family residence.
- 2.3.4 The PA's decision to grant permission for the current application on appeal is based on a change in policy in the new Kerry County Development Plan 2022-2028.
- 2.3.5 The proposed development site is located in a Visually Sensitive Area, so designated because it is particularly sensitive to development, but, in rural housing policy terms, is located in an 'Other Rural Area', where preference should be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration of the construction of a new house. Section 5.7¹ of the Plan states that the Planning Authority shall give priority and positive consideration to the

¹ Wrongly cited by the PA as Section 5.8 of the Plan.

renovation and restoration of existing structures and vacant buildings in the rural countryside for use as permanent primary residences. The PA is of the view that the current application, where the applicant is intending to use the restored house as his permanent residence would comply with the provisions of the new Plan, particularly as the applicant has stated that he is involved in farming his uncle's farm holding.

2.3.6 The applicant has stated in the Supplementary Information section of the application form that he is a resident of the rural area in which the dwelling is located, sharing accommodation at his uncle's adjacent farm, and that the proposed development will be occupied by the applicant. However, the applicant has indicated that the proposed dwelling will not be occupied as a primary permanent place of residence. The applicant has also indicated that his current place of work is a veterinary products supplier in Ballinskelligs village and also has indicated in the application form that he is not engaged in agriculture, although this latter response on the application form could have been made in error.

2.3.7 The Third Party has provided evidence that the applicant is the current registered owner and resident of a dwelling in Cahersiveen, c. 22.5km by road to the north-east of the proposed development site.

2.3.8 The applicant has provided no evidence to the contrary (his agent's response to the appeal was received after the statutory period and returned). This, coupled with the fact that the applicant has indicated that the proposed dwelling will not be occupied as a primary permanent place of residence, does not, in my opinion, comply with the specific provisions of Policy Objective KCDP 5-16, as supported by Section 5.5.1.3 of the Plan, in respect of Other Rural Areas, and Policy Objective KCDP 5-20, as supported by Section 5.7 of the Plan, in respect of the renovation and restoration of existing and vacant buildings situated in rural areas. These policies, which are considered reasonable, collectively require the applicant to reside in the dwelling to be retained on a permanent basis, and that the dwelling is the primary permanent residence. To permit the proposed development would materially contravene Policy Objectives KCDP 5-16 and KCDP 5-20 of the Plan.

2.3.9 In view of the applicant's stated position that the proposed dwelling will not be occupied as a primary permanent place of residence, I would share the Third Party's concern that the proposed development, in a rural location, could be used as a

holiday home/second home. This would be contrary to Policy objective KCDP 5-23 of the Plan, which seeks to ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.

2.3.10 I am also mindful of the Board's decision in respect of ABP Ref No. ABP-311489 (PA Ref No. 21/770), and the concern raised in relation to compliance with National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas not under urban influence - such as the proposed development site - seeks to facilitate the provision of single housing in the countryside having regard to the viability of smaller towns and rural settlements. Having regard to the applicant's current place of residence, his stated place of work, and that the proposed development site will not be the applicant's primary permanent place of residence, the development is contrary to National Policy Objective 19 of the NPF.

2.4. Use of the existing building

2.4.1 The Third Party comments that the existing building was previously used for agricultural purposes and would have been classified as an agricultural building.

2.4.2 However, the existing building was previously subject to PA Ref No. 98/2438 which established that it is a dwelling house.

3.0 Recommendation

3.1. I recommend that permission for the development be refused for the following reasons and considerations.

4.0 Reasons & Considerations

Policy Objective KCDP 5-16 of the Kerry County Development Plan 2022-2028 in relation to Other Rural Areas seeks to accommodate demand for permanent residential development. Policy Objective KCDP 5-20 of the Plan seeks to ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. These policies are considered reasonable. Having regard to the documentation submitted with the application and appeal, it is considered that the proposed development, which will not be the applicant's primary permanent place of residence, would materially contravene Policy Objectives KCDP

5-16 and KCDP 5-20 of the Kerry County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Kerry County Development Plan 2022-2028

Relevant Policies

Chapter 5 of the Kerry County Development Plan 2022-2028 sets out the Council's policies with respect to rural housing. Section 5.5.1.3 of the Plan identifies Other Rural Areas, including the location of the proposed development site, as those which have low population density and by virtue of their location and topography are isolated. It is stated that in these areas, the challenge is to stop sustained population and economic decline with a focus on both villages and rural areas.

Policy Objective KCDP 5-16 in relation to Other Rural Areas seeks 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.

Section 5.5.2.1 of the Plan sets out the provisions of an Occupancy Condition and Section 47 Agreements.

In relation to Occupancy Condition: All permission granted for rural housing shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

In relation to Section 47 Agreements: In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming overdeveloped the Council may seek agreement under Section 47 of the Planning Act if it considers it necessary to regulate development in the area.

The following rural housing policies are of note:

KCDP 5-19 Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county.

KCDP 5-20 Ensure that all permitted residential development in rural areas is for use

as a primary permanent place of residence and subject to the inclusion of an Occupancy Clause for a period of 7 years.

KCDP 5-21 Ensure that all developments are in compliance with normal planning criteria and environmental protection considerations.

KCDP 5-22 Ensure that the design of housing in rural areas comply with the Building a house in Rural Kerry Design Guidelines 2009 or any update of the guidelines.

Map 5.2 of the Plan indicates that the area in which the proposed development is located has a relatively high degree of holiday homes, representing 30-40% of housing stock. Policy objective KCDP 5-23 seek to ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.

Section 5.7 of the Plan sets out the applicable policies with respect to the renovation and restoration of existing and vacant buildings situated in rural areas. This states that a key component of the rural landscape of the County is the legacy of traditional dwellings and buildings, many of which have been neglected in preference for new dwellings, or because traditional buildings have become unsuitable as farming practices have changed. In the interest of preserving the County's vernacular architecture and built heritage, the Planning Authority shall give priority and positive consideration to the renovation and restoration of existing structures and vacant buildings in the rural countryside for use as permanent primary residences.

It is further stated that it is the Council's policy to seek to retain and preserve vernacular dwellings and structures whilst promoting their sympathetic renovation and continued use rather than replacement. The following provisions apply:

- The structure to be restored/renovated shall constitute an identifiable dwelling, with the walls and roof intact.
- In the case of refurbishment and extension proposals, the scale and architectural treatment of proposed works shall be sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development

In this respect, the following policy objectives are of note:

KCDP 5-24 Enhance, integrate, and protect the special physical, social, economic, and cultural value of built heritage assets through appropriate and sensitive use now and for future generations.

KCDP 5-25 Seek to preserve traditional or vernacular rural houses in order to protect the varied types of housing stock in the County and to preserve the rural built heritage.

KCDP 5-26 Promote the viable re-use of vernacular dwellings and buildings without losing their character and to support applications for the sensitive restoration of disused vernacular or traditional dwellings as permanent places of residence.

KCDP 5-27 Facilitate the sensitive restoration and conversion to residential use of disused vernacular or traditional buildings as permanent places of residence.

KCDP 5-30 Facilitate and support the objectives and actions of the plan “Housing for All, a New Housing Plan for Ireland” to tackle vacancy and the efficient use of existing housing stock in relation to vacant, derelict structures including heritage buildings.

The site is also designated a Visually Sensitive Area in the Plan. Section 11.6.3.1 of the Plan notes that visually sensitive areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.

Section 11.6.4 of the Plan states that the following provisions shall apply to development in Visually sensitive landscapes areas:

- There is no alternative location for the proposed development in areas outside of the designation.
- Individual proposals shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character, integrity and distinctiveness of the landscape or natural environment.
- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations.

Existing site features including trees and hedgerows should be retained to screen the development.

- Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.
- The new structure shall be located adjacent to, or a suitable location as close as possible to, the existing farm structure or family home. Individual residential home units shall be designed sympathetically to the landscape, the existing structures and sited so as not to have an adverse impact on the character of the landscape or natural environment. Existing site features including trees and hedgerows shall be retained to form a part of a comprehensive landscaping scheme. Consideration must also be given to alternative locations.
- Extending development into unspoilt coastal areas is to be avoided.

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.



Aiden O'Neill
Planning Inspector

12th January, 2024