



An  
Bord  
Pleanála

## Inspector's Report ABP-314997-22

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<b>Development</b>	Retention of extension and renovation to house with associated site development works.
<b>Location</b>	Ballinahulla, Ballydesmond, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	22/108.
<b>Applicant(s)</b>	Charles McGann.
<b>Type of Application</b>	Retention of Development.
<b>Planning Authority Decision</b>	Grant subject to Conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mary Walsh.
<b>Observer(s)</b>	Charles McGann (Applicant).
<b>Date of Site Inspection</b>	24 <sup>th</sup> August 2023.
<b>Inspector</b>	John Bird.

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## 1.0 Site Location and Description

As this is an Application for Retention, it is considered that a detailed description is required at this stage and prior to Assessment.

The site is inside a right-angled bend in a rural area of scattered settlement approximately 3 kilometres south of Ballydesmond Village.

Photos in the Planner's Report show extension work to a former cottage. Work had obviously continued and at the date of my inspection the building shell had been finished externally and internally, but not fitted out.

There is an extensive level area of hardcore to the front of the site, but it remains unfinished and unsurfaced. A wooden fence has been provided on the front boundary, with a setback entrance. There was an auctioneer's "For Sale" sign on the fence. There are shrubs and trees on the road boundary to the east near the Appellant's dwelling, which is north of the site.

There is a locked shed on the west boundary and a branded freestanding oil tank near the eastern gable.

There are large covers in the proposed wastewater treatment area. The back of the site is heavily overgrown. The percolation area is stated to be existing but could not be clearly seen to have been constructed. There were rushes on the lower part of the site.

Near and parallel to the Appellant's boundary there is a (recently dug) ditch. This was holding some water near the loose stone boundary with the dwelling to the west, but it was dry and caked in the section nearest to the public road. At this point on the public road there is a bank with shrubs and trees and the ditch did not continue

through them. There are no drainage ditches out to the road at this point or on the public road where it falls past the Appellant's frontage.

There is a variation between the red line as shown on the lodged plans and the existing north and east boundaries on the ground. This is part of the area of greatest contention in relation to ponding and flooding by surface water, which is the main issue in the Appeal.

## **2.0 Proposed Development**

- 2.1. To Retain an extension to an existing cottage and to retain associated site development works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant subject to Conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

There were several requests for Further Information.

The initial Planner's Report took account of details received on 07/02/2022 and 14/03/2022. There are photographs of the work in progress and the extent of the extension can be seen in the photograph of the eastern gable. This report concluded that the proposed restoration and extension of the building was in accordance with Section 3.3.5 of the Kerry County Council Development Plan 2015-2021, which was then in force. Further Information was sought in relation to sightlines and foul and surface water.

Following Further Information submitted on 23/06/2022, 02/08/2022 and 14/09/2022 in relation to sightlines, boundary treatment and water treatment, a Decision to Grant was recommended.

Due to the small size of the extension it was stated that a Development Contribution was not required.

### 3.2.2. Other Technical Reports

There are a series of reports from the Area Engineer and the Site Evaluation Unit as Further Information became available.

The Area Engineer was satisfied in principle with the vision setbacks.

The Site Assessment Unit recommended permission subject to very specific conditions.

## 4.0 **Planning History**

None.

## 5.0 **Policy and Context**

### 5.1. **Development Plan**

The Relevant Plan is the Kerry County Development Plan 2022-2023 which was adopted on 4<sup>th</sup> of July 2022.

Chapter 5, Section 5.7, (Page 102), refers to “Renovation and Restoration of Existing and Vacant Buildings Situated in Rural Areas.”

### 5.2. **Natural Heritage Designations**

The Planning Authority’s Appropriate Assessment Screening states that the Stacks Mountain SPA and Blackwater SAC are within 2 km of the site. It concludes that Appropriate Assessment is not required.

### 5.3. EIA Screening

- 5.4. Having regard to the nature and modest scale of the proposed development, its location in a settled rural area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and 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

- As late as 21<sup>st</sup> October 2022 floods of water ran from the Applicant's site into the Appellant's property.
- Water was resting in the Appellant's garden and front gable. Kerry County Council have a video. (Not attached to Appeal File). Photos are attached.
- The situation has become worse since the date of the video. Appellant cannot go onto Applicant's land to fully (photograph) the situation.
- The Appeal relates only to the surface water problem and not to any works on the house.
- Attached photos show Appellant's flooded garden path and the road beyond and also water on the Applicant's side of the boundary.

### 6.2. Applicant Response

- The Applicant, as an Observer, submitted a letter dated 20/11/2022.

- Attached pictures dated and timed 19<sup>th</sup> November 2022 do not show any flooding of Appellant's property after torrential rain. (Inspector's Note: Photos on file are not dated or timed).
- Applicant attempted to reach agreement with Appellant.
- Proposed remedial works could be speeded up if agreement was reached.

### 6.3. **Planning Authority Response**

- None on file

### 6.4. **Observations**

- See Applicant's Response as an Observer at 6.2 above.

### 6.5. **Further Responses**

None.

## 7.0 **Assessment**

### 7.1. **Appropriate Assessment Screening**

7.2. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a settled rural area and the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

7.3. The decision of the Applicant to proceed with extensive building and groundworks in advance of planning permission has rendered it impossible for the Planning Authority Planner or this Inspector to assess the pre-development condition of the site.

7.4. The Appellant has raised no objection to the principal of the works to the building.

7.5. The Planning Authority, after several requests for Further Information and Clarification of same, has made a Decision to Grant which covers the building extension, road access and sightlines, and the waste and surface water systems. Sight lines are acceptable, and a Compliance Condition relates to the road boundary.

The WWTS is subject to very detailed Pre-Conditions which require an extension of the percolation area and implies that the entire system may have to be opened up for inspection.

The outstanding Appeal issue is ponding and surface water ingress to the Appellant's property which is downhill from the site.

The Applicant states that on buying the site there was water lodging in the area adjoining the Appellant's boundary.

The Appellant believes that the flooding and ponding was a result of site works carried out by the Applicant.

The ownership of the specific area where ponding has occurred is unclear and I consider it unwise to recommend any action within this area. Any remedial action should preferably be within the red line boundary.

In a letter dated 20/11/2022, the Applicant, as Observer, has offered a joint inspection by engineers. I am concerned that this would place an undue burden on



the Appellant. There has been an exchange of solicitors' letters, only one of which is on file.

In the absence of clear details of ownerships and legal agreements it is not clear whether the Applicant would have the authority to carry out works in this area.

As extensive works were carried out without the benefit of a planning permission, I consider that the onus of remedy should fall on the Applicant.

However, I must have regard to The Site Characterization Report.

The Site Characterization Report states that on inspection the ground was very wet. The direction of groundwater flow, shown on an OSI base, is to the northeast. This is in the general direction of the Appellant's site. It also notes that bedrock was at 1.8m below ground level and groundwater was found at 0.9m below ground level. These findings are shown in tabular form and also in section on the lodged plans.

The Applicant's photographs of the installation of the WWTS show the very extensive ground disturbance in the vicinity of these works and in the vicinity of the building.

In order to reduce the reasonable fears of the Appellant, I suggest that, in addition to the existing and proposed soakpits, there should be an additional requirement for a natural or proprietary pumped storage and reuse SUDS system. In adverse weather such a system could intercept and temporarily hold a proportion of surface and groundwater generated from the newly created hard surfaces. This requirement

could be reduced in scale if the large hard-core area was finished in a permeable material.

I have noted that the boreholes for the development, and for an existing dwelling to the west, scale at about 7m apart. I consider that any reuse of water could benefit both properties.

## 8.0 Recommendation

9.0 That Permission be granted, essentially in accordance with the very considered and detailed Conditions of the Planning Authority. That a Condition be added requiring the prior design and construction of an appropriate SUDS system. That the road boundary be constructed in accordance with the requirements of the Planning Authority. The Planning Authority has assessed that the Development Contribution would be zero in view of the size of the extension.

## 10.0 Reasons and Considerations

## 11.0 Conditions

1.	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 on the 23 <sup>rd</sup> day of June 2022, the 2 <sup>nd</sup> day of August 2022, and the 14 <sup>th</sup> day of September 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 occupation of the development and the development shall be carried out and completed in accordance with the agreed particulars. <b>Reason:</b> In the interest of clarity.
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2.	<p>Prior to occupation the access and road boundary shall be constructed in accordance with the requirements of the planning authority and to their written satisfaction.</p> <p><b>Reason:</b> In the interests of traffic safety and environmental and visual amenity.</p>
3.	<p>The developer shall enter into water and wastewater connection agreements with Uisce Éireann.</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>Prior to occupation details of an appropriate SUDS system such as a proprietary surface water interception, storage and pumped reuse system or reedbed system and / or swales for surface water from the roof and hard surface areas shall be submitted for the written approval of the planning authority and constructed and approved to the written satisfaction of the planning authority.</p> <p>Reason: To provide for the sustainable reuse of surface water and to reduce the risk of increased surface water flows into the neighboring property to the north.</p>
6.	<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>
7.	<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</p>

<p>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>
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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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.John Bird  
Planning Inspector

19<sup>th</sup> October 2023