



An
Bord
Pleanála

Inspector's Report

ABP-316204-23

Development	Retention of existing house as built and associated works
Location	Garraun, Firies, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2344
Applicant(s)	Pheilim Fitzgerald
Type of Application	Retention Permission and Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Pheilim Fitzgerald
Observer(s)	None
Date of Site Inspection	3 November 2023
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. The 0.21ha site is located in the townland of Garraun, less than 150m east of the N70 from Castlemaine to Tralee national route, sitting approximately 6 km northwest of Firies. The topography of the land around the site is rising in a northwest direction towards Knockawaddra in the Slieve Mish Mountains range. The site is approximately 140m southeast from the junction of the local access road with the N70. A tributary of the River Maine flows approximately 120m southwest of the subject site.
- 1.2. The subject site, located to the southern side of the local road, comprises a dwelling, driveway and vehicular entrance. The dwelling proposed to be retained includes a ground floor (175.3 sq.m) and basement level of (174 sq. m). Given the sloping site the dwelling reads as single storey to the front and two storeys to the rear. The dwelling is vacant, and the surrounding site is overgrown with some piles of waste evident. The area is characterised by one off ribbon development with a number of existing dwellings in close proximity, both adjoining and on the opposite side of the local road. The immediate adjoining site to the west is a derelict part-built dwelling with large berms to the front and the site is also very overgrown. To the east of the site is a single storey detached dwelling. The set back of the building from the local road is generally consistent with that of adjoining residential properties.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of a dwelling (split level single storey to the front with part basement/lower ground floor level stated gross floor space total 349.3 sq.m), built not in accordance with the permission consequent planning authority register reference 05/4057, within revised site boundaries. The applicant seeks permission to raise the ground levels at the rear and sides of the property, landscaping and construction of a stone retaining wall to the rear, altering the rear garage door to provide a single access door, and providing a stone finish to the side elevation walls.
- 2.2. Water supply is to the public mains, wastewater treatment is by septic tank and surface water discharges to a soak pit.

2.3. Decision

On the 14 March 2023, the planning authority decided to refuse retention and refuse permission based on the following three reasons:

1. The proposed development would be incompatible with the prevalent existing traditional house form in the locality and would seriously injure the visual and scenic amenities of the area and set an undesirable precedent for similar structures in this sensitive and scenic rural setting. The development proposed would contravene materially condition no. 7 attached to planning reg. no. 05/4057, an existing permission for development on site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The planning authority is not satisfied on the basis of submissions made in relation to the application, that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would therefore be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and development of the area.
3. The planning authority is not satisfied on the basis of submissions made in relation to the application that a rural housing need has been demonstrated in accordance with Objective KC DP 5-15 Rural Settlement Policy of the county Development Plan 2022-2028 having regard to the location of the application site in an area designated a Rural Area under Urban Influence. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2.4. Planning Authority Reports

2.4.1. Planning Reports

- Notes the planning history of the dwelling and identifies the differences in the permitted single storey dwelling and the as built, split level dwelling with part basement and attic.

- Highlights that the application site is on land designated as visually sensitive and within the line of Protected Views. Acknowledges that previous applications for retention had included proposals to attempt to address the visual impact through mounding and screening. Considers the visual impact of the development as significant due its scale and height of 8.475m when compared with adjoining dwelling house to the east. The proposal to attempt to address the visual impact do not address the significant issue – that being a dwelling of 8.475m high on site. Recommends a refusal of retention permission on visual impact.
- The applicant has not provided detail in relation to compliance with the rural housing policy for the area which is categorised as a Rural Area Under Urban Influence. It is unknown how long the dwelling house was ever occupied for in the past. Recommends that housing need is sited as a reason for refusal.
- The entrance as built is in a different location to that originally permitted. Considers this not to be significant.
- The applicant has not submitted any detail in relation to the wastewater treatment system installed on site or any details to show compliance with conditions no. 9 and no. 10 attached to the permission consequent (Planning register reference 05/4057). Recommends that wastewater is sited as a reason for refusal.
- Considers that the development is not likely to impact negatively on residential amenities in the area.
- There is no likely potential for significant effects to Natura 200 sites, AA not required.
- Having regard to the nature, scale and location of the project it is considered that this proposal is not one which requires EIA Screening of EIA.

2.4.2. Other Technical Reports

- Biodiversity Officer satisfied that the development concerned did not have a significant effect on the European site (Slieve Mish Mountains SAC).

2.5. Prescribed Bodies

- TII emphasis that they will rely on the planning authority to abide by official policy in relation to development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).
- Irish Water recommends standard conditions.

2.6. Third Party Observations

None.

3.0 Planning History

Wider landholding indicated as being in ownership of Seamus O'Connor

Under planning authority register reference 02/811 outline permission was sought for 3 no. dwellings with septic tanks on **sites referenced 1, 2 and 3** on lands to the south of the local road including the current subject site (identified as site no. 2 on ordnance survey map accompanying this subject application). A spilt decision issued with the planning authority granting outline permission for only 1 no. dwelling at site identified as **no. 3** and refusing outline permission for the other two dwellings (**sites 1 and 2**) as it was considered the proposed development by itself and by its precedent would constitute suburban type development in a rural area lacking in certain public services and community facilities. Applicant Seamus O'Connor (stated as Labhaoise O'Conchuir's father).

Permission consequent for a dwelling at site **no. 3** was granted under planning authority register reference 04/3751. Revised drawings were requested, and the ridge height reduced from 7.6m to 5.550m. (March 2005) Applicant Thomas O'Connor (signed also as Tomas O'Connor in application documentation). This dwelling is located east of the subject site.

Separately permission was granted for a dwelling with septic tank at site **no. 1** under planning authority register reference 06/3624 (March 2007). Applicant Stephen O'Connor. This part-built dwelling is located west of the subject site.

Subject site (refer to site **no. 2** as above)

There is an extensive planning history pertaining solely to the subject site as summarised below:

Planning authority register reference: 04/13 Outline permission for detached dwelling house. Refused on for two reasons (March 2004). The first reason related to the proposed development by itself, and its precedent would contribute to excessive density of suburban-type development in a rural area and that it would interfere with the character of the landscape. Secondly the proposed development would endanger public safety by reason of traffic hazard because the site is accessed via a junction on a national secondary route where sightlines are severely restricted and because the traffic movements generated by this development would be likely to cause an obstruction to road users. Applicant Labhaoise O'Conchuir.

I note that a planner's report commented that this area had come under increasing pressure for development in the last five years. It states further that if permission were to be granted the precedent would be set to open up this area for multiple development which would be unsustainable in the long term.

Planning authority register reference: 04/1114 Outline permission for detached dwelling house on subject site 0.294ha. granted subject to 16 conditions (July 2004). Applicant Labhaoise O'Conchuir.

Kerry County Council, as per their letter dated 13th April 2023 and further correspondence received on the 5 January 2024, advise that there is no manager's order available for 04/1114 and no planner's report available for 04/1114. I note that the notification of decision to grant outline permission is available on ePlan.

Summary of the relevant conditions include: -

Condition no. 7: Single storey of traditional design and construction with external walls of concrete finished in smooth or dashed plaster or finished in native stone. Pitched A-type not less than 25° and not more than 35pitch covered with slates or tiles (black, dark-grey or blue-black in colour). Windows in the front elevation of the proposed structure shall have a vertical emphasis. Finished Floor Level (FFL) not be more than 300mm above existing ground level measured at the lowest point along the external walls of the dwelling house. Applicant to submit cross-sections through the site indicating the existing and proposed ground levels and the proposed finished

floor level. Roof ridge height shall not exceed 5.6 metres over FFL. Reason: In order to integrate the structure into the landscape

Condition 12: Vehicular access to this site shall be located as shown on the site layout recessed at least 4.5 metres from the center of front boundary fence. Reason: To avoid a traffic hazard.

Condition 16: A formal Section 38 Agreement to the effect that all lands, other than the subject site, outlined in blue on Ordnance Survey map submitted on 22/3/2004 shall be reserved free of future residential development. Reason: In the interest of proper planning and development.

Planning authority register reference 05/4057 Permission consequent on the grant of outline permission for the construction of a dwelling house subject to 17 no. conditions. Total gross floor area 175.44 sq.m 1 (March 2006). Applicant Labhaoise O'Conchuir.

Ridge height shown on Site Section A-A drawing 05/244/J1/05 as 99.312m and FFL shown as 93.912m, therefore, finished floor level to ridge height is proposed to be 5.400m.

Condition no. 3 development shall be carried out entirely in accordance with the plans and particulars received by the planning authority on 29/11/05.

Condition no. 7 the dwelling house to be erected on this site shall be a single storey of traditional design...

Planning authority register reference: 06/3596 Retention permission refused for existing dwelling as constructed, changes include a repositioning of the dwelling on the site closer to the western boundary, change in the vehicular entrance location on the site and the construction of a new basement level and first floor /attic bedroom accommodation. Total gross floor area 485.78 sq. m. (February 2007) Applicant Labhaoise O'Conchuir.

Retention permission refused for three reasons, in summary because of its design, scale and bulk constitutes an incongruous feature in the rural landscape, it does not integrate satisfactorily into the landscape and the proposed retention of development

and the precedent which a grant of permission would set for similar type development would contravene materially condition number 3 and other relevant conditions of schedule 2 of 05/4057.

Planning authority register reference: 07/1573 Retention permission refused to retain existing dwelling as constructed. Total gross floor space 353.03 sq.m (June 2007). Retention refused for generally similar reasons as 06/3596. Applicant Labhaoise O'Conchuir

Planning authority register reference: 07/3631 Retention permission refused to retain existing dwelling as constructed and permission refused (November 2007) to carry out site works and landscaping to minimise the landscape impact and full planning permission to carry out improvements on the rear façade of the house to reduce visual impact. Total gross floor space 353.3 sq. m. Reasons for refusal of retention and refusal of permission similar to register refer 07/1573 summarised above. Applicant Louise O'Connor.

Planning authority register reference 09/1121 Retention permission for dwelling house as constructed and permission to carry out associated site works in the form of a retaining wall, total gross floor space 343.2 sqm, refused (October 2009). Applicant Tomas O'Connor.

Planner's report available and notes that the application did not include all the recommended revisions as discussed at pre-planning. The application does not address the reasons of refusal of the previous three planning applications. Furthermore, the applicant is different to the applicant who was originally granted permission consequent 05/4057 and the supplementary information has not been submitted they are unable to determined housing need or applicants ties to the area.

Planning authority register reference 10/970 Refusal of retention permission for existing house as constructed and permission to carry out associated site works, in the form of retaining walls all within revised site boundaries (site area 0.27ha). Total gross floor space 352.8 sq.m, (November 2010) Applicant Tomas O'Connor.

4.0 Policy Context

4.1. Development Plan

4.1.1. Under the Kerry County Council Development Plan 2022-2028 the site is unzoned but within a rural area designated as 'Rural Area Under Urban Influence' and just outside of the area designated 'Rural Areas Under Significant Urban Influence'.

4.1.2. Rural Housing

Relevant excerpts include:

Chapter 5 set out the policies required for the continued sustainable development of rural County Kerry, in a manner that is consistent with the guidance, strategies and policies at National and Regional level...

Section 5.5 outlines that: It is the policy of the Council to ensure that future housing in rural areas complies with all National Policy documents including the National Planning Framework (NPO 15 & 19), the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (DoEHLG), RSES and Circular PL 2/2017...

Section 5.5.2.1 outlines in respect to Rural Areas Under Urban Influence that: In these areas, population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural/agricultural economic base. The key challenge in these areas is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas.

Noting, **KCDP 5-15** Rural Settlement Policy in Rural Areas under Urban Influence and that preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.

Relevant policies include:

KCDP 5-4 Ensure that future housing in all rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG), circular PL2/2017, National Planning Framework (NPOs 15 & 19) and the Development Management Guidance of this Plan.

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.

KCDP 5-23 Ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape.

Volume 6 of the Kerry County Development Plan 2022-2028 contains development standards for residential development on rural and non-serviced sites, section 1.5.10.1-1.5.10.10 relate.

Wastewater Facilities

13.2.2.4 Individual Private Wastewater Facilities in Rural Areas

KCDP 13-19 Ensure that proposed wastewater treatment system for single rural dwellings are in accordance with the ‘Code of Practice Wastewater Treatment and Disposal System Serving Single Houses, EPA 2021’ and any updated version of this document during the lifetime of the Plan, and are maintained in accordance with approved manufacturer’s specifications and subject to compliance with the Water Framework Directive, the Habitats and Shellfish Waters Directives and relevant Pollution Reduction Programmes.

Landscape

The subject site is located within Landscape Character Area 18 Milltown and Castlemaine. Overall sensitivity defined as ‘Medium’ where some of the key characteristics and qualities of the landscape are sensitive to change.

There are two types of landscape designation:

1. Visually Sensitive Areas
2. Rural General

The subject site is located within the 'Visually Sensitive Areas' designation: section **11.6.3.1 Visually Sensitive Areas** refers.

Section 11.6.4 Development is not precluded in visually sensitive landscapes; however, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape. 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.

Landscape Sensitivity

KCDP 11-78 Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness

or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

Views and Prospects

The subject site is located within the designated view and prospect running along the N70 looking eastwards.

KCDP 11-79 Preserve the views and prospects as defined on Maps contained in Volume 4.

KCDP 11-81 Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

- 4.2. **Sustainable Rural Housing Guidelines for Planning Authorities** (2005) These guidelines outline a key objective for the local planning system to deliver sustainable rural settlements. The guidelines differentiate between Urban Generated Housing and Rural Generated Housing. This distinction acknowledges the fact that demands for housing in rural areas arise in different circumstances and also differentiates between the development needed on rural areas to sustain rural communities and development tending to take place in the environs of villages, towns and cities which would be more appropriately located in these places.

For applications in areas under significant urban influence section 4.1 of the guidelines sets out how applicants should outline how their proposal is consistent with the rural settlement approach in the development plan and should supply supporting information where appropriate.

4.3. **National Planning Framework**

- 4.3.1. **National Policy Objective 15** Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- 4.3.2. **National Policy Objective 19** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social

housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

4.4. Natural Heritage Designations

The application site is not located in or immediately adjacent to any natural heritage site. The closest European site is the Slieve Mish Mountain SAC (Site Code 002185) within 120m to the northwest of the site.

4.5. Environmental Impact Assessment (EIA) Preliminary Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

5.0 The Appeal

5.1. Grounds of Appeal

- It is argued that all three reasons for refusal have been applied incorrectly and inappropriately to the subject site, and that a wholly inaccurate analysis of the current situation has been applied, key points summarised below.
 - Reason 1: The subject dwelling is set substantially below the road level and appears as single storey from the road. There is extensive natural screening, comprising treeline and dense hedgerow at the front and rear boundaries of the site. The two-storey nature of the back of the property is currently visible and it is the intention of the subject application to address this. Not only does the design proposal comply and address the proposed treatments cited for consideration with planning register reference 09/112, but it further improves the rear aspect by removing the basement garage door and vehicular access to the rear.

- Reason 2: It is not fair and just assessment by the planning authority not to request a condition survey be carried out, under further information, if the authority had concerns regarding effluent treatment. The applicant has submitted a condition survey on the effluent treatment system. There is no increase in the number of bedrooms in the subject application than granted originally under planning register reference 05/4057 (i.e., 4 no. bedrooms) and therefore no increase in hydraulic load. It is submitted that a condition could be applied that the on-site effluent treatment system is certified by a suitably qualified engineer and that an annual maintenance agreement is entered into for the Mechanical Aeration Unit (MAU) as part of the works.
- Reason 3: The principal of the Rural Settlement Policy 2022-2028 is for new developments and new housing for that period, not previously lived in 'second hand' dwellings. The dwelling has been constructed for approximately 17 years and predates the KCDP 2022-2028. The property was previously occupied by the original applicant for several years, circa 2006 to 2012, as a primary place of residence. The original occupation clause, under planning ref 05/4057 condition no. 1 called for a two-year initial occupation by the applicant, and this has more than been complied with. It is acknowledged that any planning non-compliance of the property is an encumbrance. The property is statute barred from any enforcement, this is clearly not an ideal situation, and the applicant is striving to better and improve the situation.
- No enforcement action has ever been instigated against the property since it was constructed. The dwelling has been vacant for approximately 10 years and the external aspect of the property has become quite 'rundown' and gardens and landscaping completely overgrown. Welcome any condition that would attach a primary residence clause and ensure against a 'holiday home' or second home use.
- There appears to have been a misinterpretation and incorrect application of the County Development Plan (2022-2028) and a lack of consistency relating

to requirements, as cited within previous planning officer reports regarding this same site.

5.2. **Planning Authority Response**

- None.

6.0 **Assessment**

6.1. The main planning considerations relevant to this appeal case relate directly to the three reasons for refusal and, in the interests of coherency, the structure of my assessment aligns with the order of reasons for refusal set out in the Schedule:

- Visual impact
- Wastewater treatment
- Compliance with rural settlement policy

6.2. Visual impact

6.2.1. The subject site forms part of the larger field and, originally, in totality shown as the landholding of Seamus O'Connor (as indicated in application drawings planning register references 04/13 and 04/1114). Outline permission and permission consequent was granted to a Labhaoise O'Conchuir, stated as being the daughter of the owner (Seamus O'Connor) of the lands, for a four-bedroom single storey dwelling (planning history as detailed in section 3.0). Condition no. 16 of the outline permission (04/1114) required a Section 38 agreement to effect that all lands other than the subject site be reserved free of further residential development. From my review of the available planning history this agreement was not put in place and subsequently permission granted for another dwelling house, on the landholding of Seamus O'Connor, to the west of the subject site, planning register reference 06/3624 for applicant Stephen O'Connor.

6.2.2. The applicant states in the appeal documentation that the house was constructed in 2006. I note the copy of building commencement notice, receipt of notice dated the 3 March 2006, attached.

6.2.3. As clearly set out in the application and appeal documentation, the planning authority's planner report and from my own site inspection the house as constructed is not in accordance with its original permission.

6.2.4. The drawings accompanying the subject application identify datum levels and subsequently FFL levels and ridge line heights which are not the same as the permission consequent planning register reference 05/4057. Both are set out for clarity in table 6.2 below:

Reference	05/4057	23/44/ABP 316204-23
Road Level	97.900	123.33
Proposed FFL	93.912 (-3.988)	120.87 (-2.46)
Ground level (front of dwelling)	93.712 (-4.188)	120.67 (-2.66)
Ridge line height	99.312 (+1.412)	126.63 (+3.3)

Table 6.2

6.2.5. In the permission consequent application, the difference between the ridge line and the road level was 1.412. In the subject application, the building to be retained has a ridge line of 3.3 above the road level. The dwelling 'as built' has a ridge height of 6060mm (as per drawing 114-22-1-400) as shown from the ground level (Side Elevation West). To the rear the ridge height is shown as 8475mm from ground floor level (referred to as basement level). Variances in the fenestration detailing are noted between the 'as permitted' and the 'as built'. The vehicular entrance to the site has not been built in accordance with the permission consequent, located to the eastern edge of the site rather than the western. The dwelling and its entrance are, therefore, unauthorised.

6.2.6. I note that the grounds of appeal refer to the original owner taking the opportunity to utilise the steep site slope and incorporate a basement storey. Having regard to the submitted site section for the permission consequent application register reference 05/4057 for this site and photographic records on previous planning applications relating to the subject site as referenced in the planning history (Section 3.0) I would

not agree with this statement. The subject site is shown to be gradually sloping from the rear of the proposed single storey dwelling (Site Section A-A 05/244/J1/05). As noted in section 1.0 the topography of the land around the site is rising in a northwest direction towards Knockawaddra in the Slieve Mish Mountains range, and as such I acknowledge there is a greater cross-sectional variance when looking at the existing houses along the roadway.

- 6.2.7. From my site inspection and review of the photographic records on the planning history files I can see that some excavation has occurred, more evident in the western section of the site. It is difficult to ascertain the extent of site excavation works undertaken without cross sections including the neighbouring lands, however from site inspection the lands to the west of the subject site are significantly higher than the subject site and the lands to the east also appear slightly higher. I am of the opinion, therefore, that the works undertaken appear to have gone beyond what would be accommodated within the natural slope of the site.
- 6.2.8. Retention permission has been sought five times since the unauthorised construction of the dwelling. These applications are summarised in Section 3.0 of this report. Proposals have been included in these retention applications to mitigate the visual impact of the two-storey structure to the rear. However, the planning authority refused retention in each case as it was considered that the proposed measures were not sufficient to integrate the structure satisfactorily into the landscape and would set an unwanted precedent for similar such development in the rural area.
- 6.2.9. I acknowledge the appeal documentation includes a photographic record of other existing dwellings in the locality to demonstrate the 'varying degrees of non-traditional design' within the area, including where available the associated planning authority register reference numbers, this record does illustrate a range of house design accepted by the planning authority over the period spanning a thirty-year period. I note, however, of the 21 houses photographed within the locality the principal house type is a single storey dwelling. As such, I do not concur with the applicant's statement that the planning authority is in error in considering the prevalent form of existing dwellings in the area.
- 6.2.10. The Landscape Review (Contained in Appendices of Kerry County Development Plan 2022-2028) confirms that in terms of visual amenity from '...the N70 there are

views to the south as far as MacGillycuddy's Reeks and westwards to the sea. There are views of the Slieve Mish mountains from the Fieries-Castlemaine Road (R561)'. It identifies the sensitivity of these attributes as Medium / High. The subject site sits within this visual amenity envelope, is within the designated visually sensitive area and the line of protected views and prospects from the N70 west of the subject site.

6.2.11. I note that the site area has reduced from 0.294ha to 0.21ha in the current application, due it is stated to revised site boundaries. I acknowledge that the current application for retention includes works to mitigate the impact of the development on the visual amenity of the area. I note also that the measures proposed attempt to address the points raised by the planning authority in planning authority register reference 09/1121 and that the application includes for additional measures, including the change of the garage to a store by continuing the screening gabion baskets across the entire rear façade, adding soil and seeding the driveway to the side of the dwelling where there is currently access to the garage and includes screening planting proposals to better integrate the development into the landscape.

6.2.12. I am of the opinion that these proposed measures do in some way ameliorate the visual obtrusiveness of the two-storey rear elevation (approximately 17 metres in width). Notwithstanding, given the categorised medium to high visual sensitivity of this subject site I am of the view that the proposed imported soil mounded bank whilst it will soften the impact of the gabion baskets to an extent, the details as provided do not sufficiently demonstrate how these banks, of approximately 6.5m in depth, will sufficiently integrate the scale and bulk of the two storey rear façade to suitably graduate the bank into the existing ground levels of the site and how these proposals relate to the levels of the adjoining sites. Site section and cross-sectional drawings of existing and proposed including the adjoining lands would assist with demonstrating how it is intended to integrate the bank.

6.2.13. The proposed extension of the balcony/deck at ground floor level beyond the rear building line with railing/glazed panels will, in my option, result in an incongruous feature. I note that the design guidelines 'Building a House in Rural Kerry' advise against using balconies as inappropriate design elements. I am of the view that a revised proposal with a more graduated landscaping approach for the bank would better integrate the two-storey structure into the prevailing landscape and negate the use of the balcony/deck feature.

- 6.2.14. Separately, from the details submitted I am not able to assess the extent to which the landscaping proposals, including imported soil fill and additional natural screening plants, take into account the existing septic tank, percolation area and soak pit. I shall address this issue below in conjunction with an overall assessment of the issues relating to wastewater treatment in section 6.3.
- 6.2.15. In conclusion, I do not concur with the applicant that the "...existence of this dwelling is not a proposal, but already a fait accompli". Rather I have assessed the application on its merits as if the structure is not already in place. As such, having regard to the subject site's location within a designated visually sensitive area I am of the opinion that the application has not demonstrated that there will be a satisfactory and sensitive integration of the structure into the landscape sufficient to recommend a grant of permission.
- 6.2.16. Given the extent of the revisions required to address this issue, with respect to increased importation of soil and creation of a more graduated bank, and taking into account the designated visual sensitives of the site I am of the opinion that these issues need to be assessed in a holistic manner in conjunction with the on-site wastewater treatment system (see section 6.3) and, as such, can not be addressed by condition.

6.3. Wastewater treatment

- 6.3.1. The applicant has attached a condition survey prepared by Teicniuil-Priory Consulting Engineers Ltd. of the effluent treatment system, undertaken on 31/03/2023. I note a mislabelling of the Appendix A as referred to in section 1.0 under heading 'Previous site assessment' of the report, it is stated that Appendix A contains a copy of the previous site assessment and site layout showing septic tank and percolation under original planning ref: 04/1114. For clarity Appendix A contains the site layout map (Drwg No: 114-22-1-200 REV A) of the existing configuration of the on-site effluent treatment system. This site layout, whilst having the same drawing no. reference and date as that submitted with the application the drawing is Rev A, and this revised drawing illustrates a different location and configuration of both the wastewater treatment system and the percolation area than that submitted with the application.

- 6.3.2. Site clearance works were undertaken as part of the condition survey and found that both the in situ Mechanical Aeration Unit (MAU) and the percolation pipework differ in location and layout to the as permitted under permission consequent planning register reference 05/4057. Appendix A of the condition survey includes a new site layout drawing illustrating the existing MAU and percolation area. On the ground the condition survey has found that the as constructed Mechanical Aeration Unit (MAU) is located approximately 22 m from the rear building line, whereas the permitted wastewater treatment unit was shown to be only approximately 7 m from the dwelling (Planning register reference 05/4057 and as shown on the subject application site layout drawing) with the permitted percolation area extending vertically into the subject site, approximately 19m from the dwelling. The condition survey has revealed that the percolation area, as built, runs horizontally across the subject site and is located approximately 20m from the dwelling. Further details are required to demonstrate the levels allow for the gravity flow to the percolation area.
- 6.3.3. The condition survey concludes, acknowledging that this unit has not been used for approximately 10 years, that 'the system is in a fully workable condition (on the basis that the electrical components are tested and certified by a qualified electrician)'.
- 6.3.4. On the basis of the information submitted with the appeal, including the on-site effluent treatment system condition survey indicating that:
- the inspection of the existing plumbing system and associated WC use showed no indication of an ill-functioning drainage system and that the drainage pipes were noted to be free from blockage and the correct pipe diameters and falls were in place;
 - the area around the MAU was inspected and deemed to be intact;
 - there was no evidence of ponding (and no vegetation indicators) or odours, and;
 - the actual length of the percolation pipework installed is at least 48m (4 no. pipes at min 12 m long) more than that required i.e., EPA requirements as conditioned under 05/4057. That some minor damage was observed to the percolation pipework during investigation works, and therefore some repair works have to be carried out.

and subject to testing and certification of compliance in terms of the operation and maintenance of the system I consider that this reason for refusal may possibly be overcome following consideration in a subsequent application accompanied with the relevant details including, if any, necessary proposed works to repair the percolation pipework, full details (including sections) of the ground levels (existing and proposed) to demonstrate the suitability of the gravity fed system and certification as relevant.

6.3.5. Notwithstanding, taking into account the now known layout of the existing MAU and percolation pipework I am of the view that the recorded layout of the effluent treatment system is of such a configuration to enable the landscape mitigation proposals to better integrate the proposed bank/mound into the subject site, with a more graduated approach as already set out in my assessment in section 6.2 above, and to also inform the tree planting proposals and management of water run-off in this proposal. Therefore, having regard to the newly discovered location of the MAU and layout of the percolation area that a holistic revision of the proposed bank/mounding and planting scheme should be considered in tandem with the consideration of the existing MAU, existing percolation pipework and to include for nature-based solutions to manage water run-off. As already stated above, I am of the opinion that these issues can not be addressed by condition.

6.4. Compliance with rural settlement strategy

6.4.1. The existing building on the subject site is an unauthorised structure built approximately in 2006 contrary to the plans and particulars as approved under permission consequent 05/4057. Permission was originally granted to Labhaoise O'Conchuir stated as being the daughter of the landowner Seamus O' Connor. Condition no. 1 (b) required that the proposed dwelling shall be for the sole use of the initial occupant for a period of two years from the date of initial occupation. The applicant submits that the property was previously occupied by Labhaoise O'Conchuir and that this period of occupancy was complied with, although no evidence has been submitted to support this statement. I note that any occupancy by Labhaoise O'Conchuir related to an unauthorised dwelling and, as such, had not the benefit of permission at the time.

6.4.2. The applicant submits that the: - "Rural Settlement Policy 2022-2028 is for new development and new housing...not previously lived in 'second hand' dwellings".

Acknowledging the lack of evidence to support the sole use of the house of the initial occupant for a period of two years, as required under condition 1 (b) of planning register reference 05/4057 I do, however, accept from the available planning history records and from my site inspection that the dwelling had been occupied for a period of time. The unauthorised dwelling has been in place since 2006 and, I agree with the applicant, acknowledging the limited known facts of occupation of the dwelling, that the application of the rural settlement policy does not need to be satisfied in this case.

- 6.4.3. The applicant states that it is their intention is to 'remedy the negative features of the property' and they '...would welcome any condition that would attach a primary residence clause, that would serve to restrict the use of this property to those who would have links and/or work placements to the local area and ensure against a 'holiday home' or 'second home use'. I consider that the application of a condition restricting the use of the property to those who would have links and/or work placements to the local area not necessary in this instance taking into account the dwelling had previously been occupied. However, having regard to pressures for holiday/second homes that are experienced in the Kerry County Council functional area, particularly in visually sensitive landscapes as noted in the development plan, I consider it appropriate that in the event of a grant of retention and grant of permission that a condition be attached to restrict the use of the dwelling as a holiday home/second home in accordance with policy KCDP 5-23 which seeks to ensure that holiday/second homes shall be located in established settlements in towns and villages and not in the rural landscape.

Conclusion

- 6.4.4. I acknowledge the unauthorised nature of the property, its planning history and also the expiration of the seven-year time limit in relation to issuing enforcement notices or seeking injunctions and, consider that it is not appropriate to apply the Rural Settlement Policy to this existing structure. On balance I think that it would be preferable to see this vacant property in use and its impacts mitigated, conditioned to restrict the use of the dwelling as a holiday home/second home in accordance with policy KCDP 5-23.

- 6.4.5. Notwithstanding, as noted already in my assessment the details as provided do not sufficiently demonstrate how the bank, of approximately 6.5m in depth, will sufficiently integrate the scale and bulk of the two-storey rear façade to suitably graduate the bank into the existing ground levels of the site and how these proposals relate to the levels of the adjoining sites. Further details are required in respect to the site levels and the levels of adjoining sites for the issues relating to both, the landscape mitigation measures, and the effluent treatment system to be adequately addressed.
- 6.4.6. Having regard to the newly discovered location of the MAU and the different 'as built' layout of the percolation area I am of the view that a holistic revision of the proposed bank/mounding and planting scheme is required to provide a more graduated response in tandem with the consideration of the position of the existing in situ MAU, demonstrate of adequate falls to existing percolation pipework and to include for nature-based solutions to manage water run-off.
- 6.4.7. In conclusion, having regard to the subject site's location within a designated visually sensitive area I am of the opinion that the application has not sufficiently demonstrated that there will be a satisfactory and sensitive integration of the structure into the landscape sufficient to recommend a grant of permission.

7.0 Appropriate Assessment

- 7.1. The planning authority screened out appropriate assessment. The closest European site is the Slieve Mish Mountain SAC (Site Code 002185) within 120m to the northwest of the site.

The listed Qualifying Interests (QI) include:

- Northern Atlantic wet heaths with *Erica tetralix* [4010]
- European dry heaths [4030]
- Alpine and Boreal heaths [4060]
- Blanket bogs (* if active bog) [7130]
- Siliceous scree of the montane to snow levels (*Androsacetalia alpinae* and *Galeopsietalia ladani*) [8110]
- Calcareous rocky slopes with chasmophytic vegetation [8210]

- Siliceous rocky slopes with chasmophytic vegetation [8220]
- Trichomanes speciosum (Killarney Fern) [1421]

7.2. The report of the Biodiversity Officer (Kerry County Council) concludes that the Slieve Mish Mountains are designated for upland terrestrial habitats and that the habitats are physically removed from the retention site with no physical overlap or connectivity. I agree with the findings presented and the conclusion reached.

7.3. I note there is no known hydrological link or other Source-Pathway-Receptor (SPR) pathway to the SAC. Given the small scale of the development and the absence of any indication of a hydrological link or other pathway to the nearest European site, it is considered that no appropriate assessment issues arise as the development, to be retained and as proposed, would not be likely to have a significant effect on the individually or in combination with other plans or projects on a European site, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment is not therefore required.

8.0 Recommendation

8.1. I recommend that retention permission and permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1.	The site is located within a designated visually sensitive area (Landscape Designations - Map F, Volume Four, Kerry County Development Plan 2022-2028) and located within the visual amenity envelope of the designated view and prospect looking eastwards from the N70 positioned to west and northwest of the subject site. Having regard to: (a) the sensitivity of the landscape, (b) the unauthorised altered ground levels on site, (c) the insufficient detail provided in respect to site levels which do not sufficiently demonstrate how the proposed bank will sufficiently integrate the large scale and bulk of the two-storey rear façade into the landscape, and (d) the proposed provision of an unduly obtrusive extended deck/balcony feature with railing/glazed panels contrary to the Kerry
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	<p>County Council rural design guidelines ‘Building A House in Rural Kerry’ (2009), the development as proposed to be retained and the proposed development, by itself or by the precedent which the grant of retention and permission for it would set, would fail to satisfactorily and sensitively integrate the structure into the landscape contrary to KCDP 5-19 of the Kerry County Development Plan 2022-2028. The proposed development to be retained and the proposed development would, therefore, interfere with the character of the landscape and the preservation of the designated views and prospects and would, seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.</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.

Claire McVeigh
Planning Inspector

1 February 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	316204-23		
Proposed Development Summary	Retention of existing house as built and associated works.		
Development Address	Garraun, Firies, Co. Kerry.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	√
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	√		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No			
Yes	√	Class/Threshold Class/Threshold Part 2 Class 10 (b) Construction of more than 500 dwelling units	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	√	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	316204-23	
Proposed Development Summary	Retention of existing house as built and associated works.	
Development Address	Garraun, Firies, Co. Kerry	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for the retention of a one-off rural dwelling house within revised site boundaries and seeks permission to raise ground levels at the rear and sides of the property, augment existing landscaping and construct a stone retaining wall to the rear, alter the rear garage basement door to provide a single access door and provide a stone finish to the side elevation walls.</p> <p>No significant waste, emissions or pollutants are likely.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The size of the proposed development is notably below the mandatory thresholds in respect of a Class 10 Infrastructure Projects of the Planning and Development Regulations 2001 as amended.</p> <p>There is no real likelihood of significant cumulative considerations having regard to other existing and/or permitted projects in the adjoining area.</p>	No
Location of the	The application site is not located in or	No

<p>Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>immediately adjacent to a European site. The closest European site is the Slieve Mish Mountain SAC (Site Code 002185) within 120m to the northwest of the site.</p> <p>There are no ecological sensitive locations in the vicinity of the site.</p> <p>It is considered that, having regard to the limited nature and scale of the development, there is no real likelihood of significant effect on other significant environmental sensitivities in the area.</p>	
Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)