



An
Bord
Pleanála

Inspector's Report ABP 317898-23

Development	To retain (a) the property within revised boundaries, (b) alterations and extensions to the existing dwelling as constructed, including second vehicular access and associated site works, (c) retain existing shed, and (d) permission for a dry-stone boundary wall along part of the riverbank and associated site works.
Location	Ardrinane, Annascaul. Co Kerry.
Planning Authority	Kerry Co Council.
Planning Authority Reg. Ref.	23/390
Applicant(s)	John & Deirdre O' Donnell.
Type of Application	Permission.
Planning Authority Decision	Split Decision.
Type of Appeal	First Party
Appellant(s)	John & Deirdre O' Donnell.
Observer(s)	None.
Date of Site Inspection	December 15 th , 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located on the western side of Annascaul village. Co Kerry. It accommodates a substantial detached house with attic accommodation. The property operates as a dwelling house and provides Bed and Breakfast accommodation (Ardrinane House). There are lawns to the front and sides of the house, with stepped access to a yard area located on more elevated ground to the rear.
- 1.2. The site is adjoined on its western side by the Anascaul River, the boundary being formed by a decorative balustrade wall along the riverbank. The northern boundary is formed by the N86 which provides vehicular access to the front of the site and an onsite car parking area. There is secondary access to the yard area to the rear (east). The village park also adjoins the property to the east.
- 1.3. The area in the vicinity of the site comprises mixed uses with residential development to the northwest. The historic South Pole Inn is located opposite the site.

2.0 Proposed Development

- 2.1. The development as described in the public notices submitted with the application seeks the following:
 - (a) retention of alterations and extension to existing dwelling as constructed including associated site works,
 - (b) retention of the existing shed as constructed, and
 - (c) permission to construct a dry-stone boulder wall along part of the riverbank and associated site works.

3.0 Further Information

- 3.1. Further information on the application was sought on 31st May 2023. The planning authority noted that the changes made to the original permitted development on the site including changes to site boundaries, provision of second vehicular access and

the erection of a balustrade type wall along the west boundary in contravention of Condition No 2 of Reg Ref No 78/2476 and requested that these be addressed.

- 3.2. Other matters raised related to measures to ensure the protection/improvement of fisheries/ riparian habitat, submission of Invasive Species Management Plan and Construction Method Statement, and clarity on the floor area proposed for retention having regard to the permitted dwelling on the site.
- 3.3. The response which was received on July 13th, 2023 was to the satisfaction of the planning authority. New public notices were published, expanding the description of the proposed development to include permission for the retention of the property within revised boundaries, decorative garden walls, second vehicular access to the site and associated site works.

4.0 Planning Authority Decision

4.1. Decision

4.1.1. The planning authority issued a split decision as follows:

1. To refuse permission for the retention of the decorative garden wall (Schedule 1(a)) on 2 no. grounds, namely that it would contravene a condition attached to an existing permitted development on the site (Condition 1 of Reg No. 78/2476) and would be visually obtrusive on the landscape in accordance with Objective KCDP 11-78, and
2. To grant permission for the retention of the property within revised boundaries, alterations and extensions to existing house, including second vehicular access and retention of shed (Schedule 2(a)), and
3. To grant permission for the construction of a dry-stone wall along part of the riverbank (Schedule 2(b)).

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planning Officer's report of 8/8/23 notes that the further information received responds to the information requested. The applicant has expanded on the nature of

the application to include the retention of the development on the site within revised site boundaries, retention of the decorative wall and second vehicular access. The height and extent of the proposed drystone wall/rock armour has been reduced and Japanese knotweed management measures and construction management methodologies have been outlined.

Permission for the house was originally granted under Reg No. 78/2476. Condition No 1 required that no development take place within 15ft of the sewer line. The decorative wall proposed for retention is c 8ft from the sewer line in contravention of this condition.

A number of extensions have been constructed to the dwelling over the years totalling 155.3 m² in floor area. There was substantial screening between the house and the river, some of which has been removed to protect the decorative wall. Notwithstanding same, the visual impact of the dwelling house and shed as constructed is deemed acceptable having regard to that originally permitted under Reg No 78/2476.

The application has been assessed by the Environmental Assessment Unit which has stated that the dry-stone wall is acceptable but have raised issues regarding the decorative wall. A refusal of permission is therefore recommended for the retention of the decorative wall as it contravenes Condition No 1 of 78/2476 and has significant visual implications.

4.2.2. **Other Technical Reports**

The **Environmental Assessment Unit** noted that the site is geographically removed from European sites, which are associated with Castlemaine Harbour SAC/SPA and Dingle SPA. It is considered that the proposed works which are relatively small in scale are not likely to significantly impact on any European site or their conservations interests. Operational impacts would be similar to existing and not likely to be significant. The nature, scale and location of the proposed works is such that potential for cumulative or in combination effects with other plans or projects can be ruled out.

The hard infrastructure blockwork nature of the existing riverside garden wall together with its location close to the river is problematic from a biodiversity perspective. The application states that streamside vegetation including mature

riparian trees have been removed in the past to ensure the protection of the wall. The proposed dry-stone wall is similarly required to protect the wall.

From a biodiversity point of view, it would have been preferable if the wall had been constructed further away from the river and closer to the dwelling, thereby allowing the retention and development of streamside vegetation.

The height and extent of the proposed drystone wall/rock armour has been reduced in response to further information. It is considered acceptable subject to conditions.

5.0 Prescribed Bodies

Inland Fisheries Ireland: Noted that the proposed development is adjacent to the Owenascaul River, which is an important salmonid system particularly for Sea Trout. It raised concerns in relation to the proposed dry-stone wall and noted the following requirements:

- the area planned should be the minimum length and height necessary for the works.
- foundation boulders may only be necessary with the bank sloped back.
- The foundation should be placed in the dry and incorporated into the riverbank without reducing or impacting river width.
- The planting of native riverside trees included to protect the bank, create shade and increase biodiversity.
- No deleterious material including silt should enter the river.

Transport Infrastructure Ireland – No observations.

6.0 Planning History

78/2476 – permission granted for a two-storey dwelling on the site on March 29th, 1979.

7.0 Policy and Context

7.1. Development Plan

The site is zoned R2 'Existing Residential' under the Annascual LAP which is part of the Corca Dhuibhane Local Area Plan 2021-2027.

7.2. Natural Heritage Designations

The closest European sites are as follows:

- Castlemaine Harbour SAC (Site code 000343) located c 1.5 km to the south.
- Castlemaine Harbour SPA (Site code: 004029) located c 1.5km to the south.
- Dingle Peninsula SPA (Site code:004153) located c 1.5km to the south.

7.3. EIA Screening

7.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The concrete wall was built the same time as the house in 1980 and was built to provide protection from the river. On safety grounds, do not agree with the Council's decision to refuse permission for the retention of the wall.
- The area in question has changed a lot over the past 40 years and in that time no questions have been asked about the wall or issues raised about its impact. The Road's Department have erected a fence on the opposite side of the river (photo attached) that does not match any fence previously erected.

- The house, site and wall are at a lower level than the public road (photo attached). The village has a variety of different types of walls and railings and it is difficult to see how the subject wall is visually obtrusive.
- Cannot accept that the wall could be viewed as 'unduly obtrusive' under Objective KCDP 11-78 of the development plan. The wall predates the development plan and its provisions.
- Requests the Board to reverse the planning authority's decision.

8.2. Planning Authority Response

- The decorative wall contravenes a condition attached to a permitted development on the site.
- The wall has potential implications for the public sewer and its location close to the river is problematic from a biodiversity point of view.
- The erection of some form of boundary could be considered between the dwelling house and the river subject to a new planning application and subject to the agreement of Uisce Eireann, Water Services and the Environmental Assessment Unit of Kerry Co Council.

8.3. Observations

- None.

9.0 Assessment

9.1. Introduction

Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

I consider that the main issues that arise for determination by the Board in relation to this appeal relates to the following:

- Principle of the development

- Appropriate Assessment

9.2. Principle of the development

- 9.2.1. The proposal seeks to retain various extensions and alterations carried out over the years to the originally approved house. It also seeks the retention of altered site boundaries, retention of shed, second vehicular access to the property and a decorative wall that forms the boundary adjacent to the river. Permission is also sought for the construction of a dry-stone boulder retaining wall along part of the riverbank.
- 9.2.2. Having inspected the site, I have no objection to the retention of each of the elements proposed, with the exception of the decorative wall along the western boundary. The extensions and alterations to the house are primarily to the rear and side of the house and together with the attic conversion are acceptable having regard to the design and scale of the originally permitted house.
- 9.2.3. The changes to the site boundaries are minor in nature and include an area to the east of the site which was not included in the original application. The applicant is the stated owner of the site and I note that there are no objections on the file and the ownership of the land has not been challenged.
- 9.2.4. The shed is positioned immediately behind the house and while it is visible from the local road to the south it is not of a size or scale that would significantly impact on the visual or residential amenities of the area. I have no reason to believe that it is used for purposes other than those incidental to the enjoyment of the house. This can be addressed by condition.
- 9.2.5. There is adequate visibility in both directions from the secondary access proposed for retention to the rear of the property, such that no significant impacts arise which would prejudice pedestrian or traffic safety.
- 9.2.6. The Co. Council sewer runs through the western side of the site and Condition No 1 of the original planning permission (78/2476) specifies that no development of any description should take place within 15ft of the sewer. The line of the sewer was clearly indicated on the drawings attached to the original planning application. I note that the decorative wall proposed for retention is built just 8ft from the sewer. The wall as constructed lies within the sewer wayleave and its retention is clearly in

contravention of Condition No 1 of the original permission. I concur with the decision of the planning authority accept that this element of the development should be refused.

- 9.2.7. The planning authority in their decision to refuse permission for the wall also refers to its visual impact. The wall is most visible on approach to the village from the west where there are open views across the river. I would accept that the wall is at variance with the stone walls that align the public road in the vicinity of the site. However, its impact is mitigated to an extent by the low level of the site relative to the road.
- 9.2.8. I accept as stated by the planning authority that there are other solutions available to the applicant to provide a boundary, which would provide protection from the river and also provide an opportunity to address the biodiversity concerns raised. Having regard to the provisions of Condition No 1 this would not take the form of a wall and a boundary hedge would be an appropriate solution, developed in consultation with the planning authority.
- 9.2.9. The second component of the proposal seeks permission for the construction of a dry-stone boulder wall along part of the riverbank to reduce erosion and reinforce the existing boundary wall. The presence of Japanese Knotweed along the riverbank in the vicinity of the works was noted in the planning authority reports. The extent of the proposed boulder wall was reduced in size in response to further information. I note that the works were to be completed from applicant's garden with no excavation and no instream works.
- 9.2.10. At the time of inspection, I noted that these works were completed. A small area of riverside vegetation has been removed and replaced with dry stone boulders. While it would appear that the requirements of Inland Fisheries Ireland are generally complied with, in term of the works being completed in the dry and the width of the river being maintained, it is unclear if any consultation was held with IFI prior to, or, during the works.
- 9.2.11. The submitted Invasive Species Management Plan identifies an area of infestation beneath the wall and outside the works area. It is unclear if the protocols for its management and treatment were complied with.

9.2.12. As the status of this part of the application has changed, the Board may consider that this warrants a new application for retention.

9.3. **Appropriate Assessment Screening**

- 9.3.1. The planning authority concluded that as the works were located outside and physically removed from European sites, there was no pathway for impacts.
- 9.3.2. Having regard to the nature and limited scale of the development proposed for retention as part of the application, the nature of the foreseeable emissions therefrom, the nature of the receiving environment as a built-up urban area and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.
- 9.3.3. The Annascaul River which forms the western boundary of the appeal site flows south and discharges into Dingle Bay. While the river itself is not located within any European site, its point of discharge would appear to be within the boundaries of 3 no. European sites to the south (Castlemaine Harbour SAC & SPA and Dingle Peninsula SPA). The river therefore creates a pathway to these European sites.
- 9.3.4. I have considered whether the development, in advance of the works, would have triggered a requirement for Appropriate Assessment. I consider that the removal of vegetation to facilitate the placing of the boulders along the riverbank would create the potential for discharge of small quantities of sediment to the river. However, having regard to the limited nature and scale of the development, the methodology proposed with no instream works and the distance to the European sites, I do not consider that the potential would arise for significant effects on any of the European site and it is possible to screen out the requirement for the submission of an NIS.

10.0 **Recommendation**

I recommend that the Board issue a split decision in this case and refuse permission for the retention of the decorative wall and to grant permission for the retention of the other elements of the development.

11.0 Reasons and Considerations (1)

It is considered that the retention of the decorative garden wall along the western boundary of the site would materially contravene Condition No. 1 of the parent permission granted under Register Reference No 78/2476 relating to the required separation distances to the public sewer and would, therefore, be contrary to the proper planning and sustainable development of the area.

12.0 Reasons and Considerations (2)

12.1. Having regard to the permitted residential development on the site and the nature and extent of the development, it is considered that subject to the conditions set out below, the retention of the development as proposed including (a) the retention of the property within the revised site boundaries, (b) the retention of extensions and alterations to the dwelling, (c) the retention of the existing shed, and (d) the retention of the secondary vehicular access to the site would not detract from the visual amenities of the area, and would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 13th day of July 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The shed shall be used for private domestic purposes only and shall not be used for commercial, industrial purposes or for the housing of animals.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Within one month of the date of this Order, the applicant shall submit proposals for written agreement with the planning authority to provide a hedgerow along the western boundary of the site. Planting shall include native indigenous species only. A timescale for implementation shall be agreed with the planning authority.</p> <p>Reason: In order to provide protection from the river and improve biodiversity along the riverbank.</p>
5.	<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 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>Reason: 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>

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.

Breda Gannon
Planning Inspector

09 January 2024