



An  
Bord  
Pleanála

## Inspector's Report ABP 318210-23

### Development

- (a) Retention of dwelling house and garden shed as constructed on revised site boundaries.
- (b) Permission to construct new front porch together with all associated site works.

### Location

Willow Lodge, Riverside, Oakpark,  
Tralee, Co. Kerry

### Planning Authority

Kerry County Council

### Planning Authority Reg. Ref.

23/857

### Applicant

Irene O'Donnell

### Type of Application

Permission

### Planning Authority Decision

Grant subject to conditions

### Type of Appeal

3<sup>rd</sup> Party v. Grant

### Appellants

John & Sheila O'Driscoll

### Date of Site Inspection

3<sup>rd</sup> February 2024

### Inspector

Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.1. The site is located within the residential suburb of Oakpark to the north of Tralee town centre. Riverside is an established residential estate which is accessed from Oakpark Road (R878). The site is located on a right-angle bend where the estate road swings southwards. Willow Lodge is a detached single-storey house which has been erected on an infill site and is accessed by means of a narrow driveway from riverside. The site backs onto another residential road, Meadowlands Estate, from which pedestrian access can be gained to the rear.
- 1.1.2. The third-party appellants' house is immediately to the east and comprises a narrow-fronted, 3-storey house, which may also have been an infill house in the past. The appellant's house has a long and narrow footprint which aligns roughly with the established front setback to the east along the street. The western side elevation is very close to the common boundary, which is defined by a masonry wall which is capped and rendered on the appellants' side. The wall is painted in sections on the applicant's side, but not rendered. An extension has been erected (many years ago) along the western side of the appellants' house with a further extension to the rear. This side extension has a corrugated Perspex roof.
- 1.1.3. The appeal site area is given as 0.04ha. The site comprises a single-story house with a pitched roof, which is set back approx. 22m from the roadside entrance and is elevated c.1 metre above the level of the road. The bungalow dates from the 1970s, but has recently been extended to the eastern side, along the side of the house. There is a small lawn to the front, accessed by means of some steps, and a parking space between the lawn and the roadside boundary. The existing extended dwelling is setback 2.1m from the western boundary and between 870mm and 1041mm from the eastern boundary. The site levels rise slightly from south to north and the FFL of the existing house is shown on the submitted plans as being slightly higher (at 10.00mOD) than that of the house to the east (9.85mOD). There is a masonry shed in the rear garden.

## **2.0 Proposed Development**

- 2.1.1. The proposed development seeks permission to retain the dwelling house and garden shed as constructed on revised boundaries, and to construct a new porch to

the front (southern elevation). As the house was constructed in the 1970's, but extended to the eastern side relatively recently, it is assumed that the reason for the retention of the dwelling house as constructed, refers to the extended section. However, this has not been made clear in the submissions.

- 2.1.2. The side extension has a lean-to roof of profiled steel. It extends approx. 9 metres to the north and is c.2m wide, giving a floor area of 18m<sup>2</sup>. It includes three windows (two single and one double), along the eastern elevation, facing the common boundary wall. The southern elevation of the extension is recessed slightly (by c. 200mm) behind the front elevation. The rear portion of the side extension projects approx. 170mm bringing it to c.870mm from the party wall. The remainder of this extension is set back c.1041mm from the common boundary.
- 2.1.3. The proposed porch is located at the south-eastern corner of the house and would extend across to the eastern elevation of the new extension. The floor area is stated as 7.7m<sup>2</sup>. However, the dimensions are given as projecting 2.5m forward of the building line and 3.9m in width, which gives a floor area of 9.75m<sup>2</sup> (gross).
- 2.1.4. It is also proposed to retain the existing garden shed in the rear garden. It has a stated floor area of 19m<sup>2</sup> and a height of 2.37m. the stated dimensions are 3.0m wide x 7.3m deep. However, the gross floor area would be 21.9m<sup>2</sup> based on these dimensions.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission for the retention of the house and shed on revised boundaries and for the construction of a new porch. The retention permission was granted as Schedule 2A subject to one condition, i.e. that the development be carried out entirely in accordance with the submitted plans and documents. The porch was permitted under Schedule 2B subject to three conditions including:

**Condition 3:** (a) Proposed porch extension shall be in accordance with the design drawing submitted to P.A. on 27/07/23 and

(b) The external materials and finishes to walls, roof and windows to the proposed porch shall match the existing dwelling house.

**Condition 4:** the developer shall institute appropriate measures to prevent material being drawn onto the public road and shall make good any damage to public footpaths.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's report noted the suburban location of the site and the small-scale residential nature of the proposal. The concerns raised by the third parties were noted in terms of the proximity of the extension to their house, overlooking from windows on the eastern elevation, the roof of corrugated sheeting and impact of the proposed porch on light availability to the kitchen/living room of the adjoining property. It was noted that no issues had been raised by the traffic or drainage sections of the P.A.

In terms of residential amenity, it was considered that the proposal would not be seriously injurious to the neighbouring property by way of overlooking or loss of daylight. It was further considered that the proposal would not give rise to any significant visual impacts. The need for EIA and appropriate assessment were ruled out on the basis of the size and scale of the project and the nature of the receiving environment. It was considered that no financial contribution was payable as the porch extension was stated to be 7.7m<sup>2</sup>.

A **grant of permission** subject to conditions was recommended.

### 3.3. Other Technical Reports

3.3.1. Roads Report received – no objection subject to conditions.

### 3.4. Prescribed Bodies

3.4.1. None received.

### 3.5. Third Party Observations

- 3.5.1. The Planner's Report states that one objection had been received by the planning authority (from the appellants). The letter was submitted to the P.A. on the 16<sup>th</sup> August 2023 and raised similar issues to those set out in the grounds of appeal. The issues raised related to impact of porch on availability of daylight to side windows, overlooking from windows on side extension and inappropriate nature of roofing material.

## 4.0 Planning History

- 4.1.1. **889/22/74** – Pre-fab bungalow  
4.1.2. **922/55/74** – Prefab bungalow  
4.1.3. **2151/70/181** – sun lounge

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The site is zoned R2 Existing Residential, the zoning objective for which is to Provide for residential development and protect and improve amenity.  
5.1.2. **Development management standards – Volume 6 of CDP**

#### **Section 1.5.6.1 – Extensions to dwellings**

**Front Extensions – porch extensions** - other than those deemed to be exempted development, should be of appropriate design and scale relative to the design of the original house and shall not dominate the front elevation of the dwelling. Front extensions, at both ground and first level will be considered acceptable in principle subject to scale, design and impact on visual and residential amenities. A break in the front building line will be considered subject to scale and design and impact on established residential and visual amenity. A minimum driveway length should be maintained appropriate to the site context.

**Rear/side Extensions** - will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining.

First floor rear/side extensions will be considered on their merits and will only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities.

In determining applications for first floor extensions, the following will be considered:

- Degree of overshadowing, overbearing and overlooking - along with proximity, height and length along mutual boundaries.
- Size and usability of the remaining rear private open space.
- Degree of setback from mutual side boundaries. No part of the extension shall encroach or overhang adjoining third party properties.

Any planning application submitted in relation to extensions, basements or new first/upper floor level within the envelope of the existing building, shall clearly indicate on all drawings the extent of demolition/ wall removal required to facilitate the proposed development. In addition, a structural report, prepared by a competent and suitably qualified engineer, may be required to determine the integrity of walls/structures to be retained and outline potential impacts on adjoining properties. This requirement should be ascertained at preplanning stage.

**Alterations at Roof/Attic Level Roof alterations/expansions to main roof profiles** (changing the hip-end roof of a semi-detached house to a gable/'A' frame end or 'half-hip' for example) and additional dormer windows will be assessed having regard to the following:

- The character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Established streetscape character and roof profiles.
- Dormer extensions to roofs, i.e. to the front, side and rear, will be considered with regard to impacts on existing character and form and the privacy of adjacent properties.

**1.5.10.9 Sheds/garages/ancillary structures** - Notwithstanding those developments listed under Class 3, Schedule 2 Part 1 (P & D Regs 2001 as amended), the cumulative area of all structures shall not exceed 70sqm for private domestic use and storage only.

## **5.2. Natural Heritage Designations**

Tralee Bay Complex SPA (site code 004188) located approx. 2.5km to the south.

Tralee Bay & Magharees Peninsula West to Cloghane SAC (site code 002070) located approx. 2.5km to the southwest

Ballyseedy Wood SAC (Site code 002112) is located approx. 4km to the southeast.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A Third-Party Appeal has been received from the adjoining neighbours to the east, John and Sheila O'Driscoll. The submission outlined the background and history relating to the construction of the side extension and the proposals to construct the porch. Photographs were enclosed showing the extension, mid-construction, together with the timber frame structure for the porch and concrete slab laid underneath to proposed porch. It is noted that there is much discussion in the submissions from both parties relating to statements made and past disputes regarding the siting and design of the porch. However, these issues relate to matters between the parties and are not matters for the Board to address.

6.1.2. The main grounds of appeal can be summarised as follows:

- Proximity of the proposed porch to the neighbouring dwelling to the east, being c.1 metre.
- The proposed porch will block light to the living room window as well as to the utility room/kitchen window. It is stated that the light to the living room is already poor and the proposed porch will exacerbate this and lead to a further reduction in amenity to the appellants' dwelling. The appellants are elderly and rely to a great extent on light from the west to their living room.
- The impact of the side extension, which is unauthorised, will be exacerbated by the addition of the porch by reason of its extent, scale, bulk, mass and size in such close proximity.

- The conclusions of the Area Planner were disputed. It was pointed out that had the Area Planner inspected the interior of the appellants' house, they would have been in a better position to judge the impact of the porch.

## 6.2. Response from first party

- 6.2.1. A response to the grounds of appeal was received from the first party on the 3<sup>rd</sup> of November 2023. The main substance of the response was in the form of a rebuttal of the grounds of appeal. The following points of note were made:

**Unauthorised extension:** It was pointed out that the extension in question was in fact constructed at the rear of the dwelling as the original front door of the house was on the left-hand side, and it was under 40sq.m. Thus, it was assumed to be exempted development.

**Background** – the applicant states that several attempts to reduce the size of the porch had been made as part of the negotiations with the appellants. However, there was a complete failure to reach agreement and the applicant decided to go ahead with the porch as originally planned.

**No loss of amenity** – It is claimed that the windows in the western elevation of the appellants' property are facing directly west and do not receive any direct sunlight. It is claimed that the window is forward of the porch and that due to the angle of the sun, it would not lose any sunlight, even in mid-winter. Photographs illustrating this are enclosed. In addition, it is submitted that the windows in question are not ones to living areas. The first is to an anteroom and the second is a utility room. The room with poor light is so because there is an overhanging corrugated iron roof extending 3 metres out beyond the wall.

## 6.3. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

## 7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

- Principle of development



- Impact of the retention of the lean-to extension and shed
- Impact of proposed porch extension
- Environmental Impact Assessment
- Appropriate Assessment

## **7.1. Principle of development**

- 7.1.1. The site is an infill site on which the existing house was constructed in the 1970s. No details have been provided of the original plans or of the planning permission that was granted in 1974. The planning authority has referred to applications for a pre-fab bungalow in 1974, but no details have been supplied and they are not available on the P.A. website. The description of development, however, seeks the retention of the house and the garden shed on revised boundaries, as well as the construction of a proposed porch. This would indicate that permission is being sought, retrospectively, for the construction of the house and garden shed on the subdivided site, as well as permission for a proposed porch.
- 7.1.2. Notwithstanding this, it was clear from my site inspection that an extension was added recently to the eastern side of the house, which is within 1 metre of the boundary with the adjoining house. The construction of the extension has also been the subject of several photographs submitted by both parties during the application and appeal processes. The submitted drawings, however, do not show the before and after site layout of the site, with the house as constructed in the 1970s. Instead, the house, as recently extended, is shown as the existing house that is to be retained and the proposed extension relates only to the proposed porch. There is no indication of the original eastern elevation of the house which appears to have been demolished. The recently constructed lean-to extension, which does not appear to have been the subject of any planning applications, is not shown as an extension to the house on the submitted plans, but forms part of the house to be retained.
- 7.1.3. The applicant, in the response to the grounds of appeal, acknowledges that an extension was constructed, but claims that it was added to the 'rear' of the house, as the original front door was on the western elevation. There is no documentary evidence of this on the file and no information is available on the planning authority's website. In any case, it is considered that the extension would not comply with Class

1 of Schedule 2, Part 1 of the P&D Regs 2001, (as amended), as the bathroom window would be within 1 metre of the boundary wall that it faces (condition 6(a)) and the area to the rear would be significantly less than 25sq.m (condition 5).

7.1.4. On this basis, it is considered that the description of development is misleading and inaccurate as the proposal appears to be either :-

- (a) to retain both the infill house on the subdivided site and the extension (constructed to the side or rear), or
- (b) to retain the lean-to extension (and shed), in the event that the house and subdivision had already been permitted.

As neither the description of development nor the submitted plans adequately address either of these scenarios, it is considered that the application is not in accordance with the requirements of Article 22 of the P&D Regulations 2001 (as amended). There are no details of the site prior to subdivision/construction of the house and the house that is to be retained incorporates a much later extension that is not clearly marked or distinguished as such.

7.1.5. It is considered, therefore that should the Board be minded to grant permission for the retention element, that revised drawings which clearly state what is being sought should be required to be submitted, together with the publication of revised notices. It is further considered that the application as submitted, if permitted, would facilitate the extension or alteration of an unauthorised structure, which would consolidate and intensify the unauthorised nature of the structure, and it would be inappropriate to grant permission in such circumstances.

## **7.2. Impact of retention of Lean-to Extension and Garden shed**

7.2.1. The extension that has been incorporated into the structure that is proposed to be retained, is single-storey with a lean-to roof. It has effectively enabled the accommodation within the house to be improved and expanded with a larger living room/kitchen. The gross floor area prior to the extension is estimated to have been approx. 84sq.m, and the extension would have increased the space to just over 100sq.m. The design with a lean-to roof and wall which is no higher than the original wall it is attached to, is generally subservient to the main dwelling and does not project forward of the building line. However, as both the appeal site and the

appellants' site are extremely tight to the boundaries, this makes it difficult to accommodate significant changes without causing a loss of amenity.

- 7.2.2. The lean-to extension, as constructed, incorporates three windows, one of which is a double one, along the boundary which is separated from the party wall by just 870-1014mm. The roofing materials on the lean-to roof comprise black painted steel sheeting, which differs from the tiled roof of the main house. These windows and the lean-to roof are quite visible from the appellants' house, which itself is very close to the common boundary.
- 7.2.3. I would accept that there is unlikely to be any significant degree of overlooking from these ground floor windows due to the relative levels and the presence of the 1.8m high concrete block wall separating the properties, but their very close proximity is likely to result in some loss of privacy. In this regard, it is noted that the windows in the western elevation of the appellants' house are long established. The roofing material on the lean-to roof is highly visible and prominent in views from the first-floor bedroom windows. It is considered, therefore, that having regard to the proximity of the development to the common boundary and to the appellant's house, the incorporation of three windows into the elevation facing this boundary, together with the use of inappropriate roofing materials on the lean-to roof, would result in some level of diminution of residential amenity for the occupiers of the adjoining dwelling.
- 7.2.4. The garden shed is typical of a garden shed in a suburban area. It is considered, therefore, that it does not give rise to any amenity issues. However, it is located within the site of the proposed development which is to be retained.

### **7.3. Impact of the proposed porch extension**

- 7.3.1. The proposed porch is stated to be 7.7sq.m, but as the dimensions are given as 3.9m x 2.5m, the floor area is calculated as 9.75sq.m. Given that it would project forward of the existing building line and would be c.1 metre from the common boundary, it is likely to have an impact on the existing windows on the side elevation of the adjoining property and on the amenity of the appellants' property.
- 7.3.2. I inspected the site, which included visits to both properties. I also viewed the site of the proposed porch from the two windows in question (in the photographs) and from the bedroom window at first floor level. The first window is to an ante-room or side

porch, but immediately inside this window is the living room window of the appellants' house. The living room was very dark with lamps on at midday. The view from this window was through the ante-room (covered with Perspex) and the said outer window. The proposed porch would be prominently visible from the living room window above the screen wall. It is considered that the outlook from the living room would be dominated by the upper wall and roof of the proposed porch and it would be likely to reduce the amount of daylight (if not sunlight) to this room.

- 7.3.3. The second window is to a utility room which is an extension of the kitchen. This window is further north along the side elevation that would be facing the porch. It is considered that the outlook and level of daylight would be adversely affected from this window. It is considered, therefore, that the porch as proposed, would adversely affect the residential amenities of the adjoining property by reason of loss of outlook and reduction in daylight.
- 7.3.4. The design and layout of the porch pays little regard to the limited width and size of both sites and the close proximity of the two houses, with opposing windows facing each other, albeit separated by a screen wall. The porch would project 2.5m forward of the southern elevation of the house and would extend beyond the original eastern elevation of the house to align with the eastern extent of the lean-to extension, giving it a 3.9m width. The design of the porch, with a pitched roof adds to the height, bulk and scale of the structure. There is approx. one metre between the front door and the patio door on the southern elevation, which could allow the porch to be moved further away from the eastern boundary. It is considered that a less obtrusive design and layout with either a flat roof or a lean-to roof (sloping southwards), together with a reduced footprint in terms of the width and extent in an easterly direction, would significantly reduce the impact on the adjoining neighbours.
- 7.3.5. In conclusion, it is considered that the proposed porch, by reason of its siting, layout, height, bulk and scale, and taken in conjunction with the poor-quality design and detailing of the lean-to extension with windows in the eastern elevation which is located within one metre of the common boundary, and the use of inappropriate roofing materials, would result in serious injury to the residential amenities of adjoining property, by reason of loss of outlook, privacy and daylight. These factors, together with the inadequacies in the submitted drawings and lack of clarity in the

description of development as outlined above, mean that the proposed development as currently designed and detailed should be refused.

#### **7.4. Environmental Impact Assessment**

- 7.4.1. The proposal relates to firstly, the retention of works undertaken without the benefit of planning permission – retention of a dwelling house and garden shed as constructed on revised boundaries, and secondly, the construction of an extension to the front of the house (porch). The construction of a domestic extension is not a class of development, however, the erection of a dwelling falls within Class 10(b). Notwithstanding this, given that part of the proposed development involves **retention** of development, it is necessary to determine whether the Board is precluded from considering the application in accordance with Section 34(12) of the P&D Act 2000 (as amended).
- 7.4.2. Class 10(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required where more than 500 dwelling units would be constructed and where 10-hectare urban sites would be developed. The proposal is for the development of a site with a stated area of 0.04ha to provide a single dwelling house with domestic extensions. Accordingly, it would not have attracted the need for a mandatory EIA.
- 7.4.3. (See completed Form 2 attached). The site is located within the built-up area of an existing town and is approx. 2.5km distant from any European sites or other sites of conservation interest. There is no realistic pathway for significant impact on the environment. The site is within an existing and long-established suburban area comprising predominantly residential development, with houses on individual plots. 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 stage that there is no real likelihood of significant effects on the environment arising from the proposed development. Environmental Impact Assessment is, therefore, not required.

#### **7.5. Appropriate Assessment**

- 7.5.1. The proposal relates to firstly, the retention of works undertaken without the benefit of planning permission – retention of a dwelling house and garden shed as constructed on revised boundaries, and secondly, the construction of an extension to

the front of the house (porch). Given that part of the proposed development involves **retention** of development, it is necessary to determine whether the Board is precluded from considering the application in accordance with Section 34(12) of the P&D Act 2000 (as amended).

7.5.2. The nearest European sites are as follows:

Tralee Bay Complex SPA (site code 004188) located approx. 2.5km to the south.

Tralee Bay & Magharees Peninsula West to Cloghane SAC (site code 002070) located approx. 2.5km to the southwest

Ballyseedy Wood SAC (Site code 002112) is located approx. 4km to the southeast.

7.5.3. Given the distances involved between the site of the project and these European Sites, that the site is located in an established urban area, on serviced lands, and in the absence of any realistic pathway to the European sites, it is considered that no appropriate assessment issues are likely to arise. Thus, Appropriate Assessment would not have been required for the proposed development.

7.5.4. Having regard to the nature, scale and location of the proposed development, the nature of the receiving environment and the distances from the nearest European site, 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.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a structure which is unauthorised and that the proposed development would comprise the extension and alteration of this

unauthorised structure, which would consolidate and intensify the unauthorised nature of this structure. Accordingly, it is considered that it would be inappropriate for the Board to grant permission for the proposed development in such circumstances.

2. Having regard to the limited width and size of the site, to the proximity to the site boundaries of windows in both the existing western elevation of the adjoining house and the eastern elevation of the structure to be retained, and to the design, siting, layout, height and scale of the proposed porch, it is considered that the proposed development, taken in conjunction with the lean-to extension by reason of the fenestration pattern and use of roofing materials, would be visually obtrusive when viewed from the adjoining dwelling and would result in a loss of privacy, outlook and daylight which would seriously injure the residential amenities of the adjoining property to the east. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

---

**Mary Kennelly**  
**Senior Planning Inspector**

**5<sup>th</sup> February 2024**