



An
Bord
Pleanála

Inspector's Report ABP-318769-23

Development	(a) Retention of existing dwelling as constructed within revised site boundaries (<i>Note: omitted via FI</i>) (b) Construct new dwelling and garage north of existing dwelling, to include private pumping station discharging to public sewer, alterations to site entrance and all ancillary works		
Location	Killowen, Kenmare, Co Kerry		
Planning Authority Ref.	23/935		
Applicant(s)	Gerald and Elaine O'Dwyer		
Type of Application	Permission.	PA Decision	To grant
Type of Appeal	Third party	Appellant	Frank McGonigle
Observer(s)	None		
Date of Site Inspection	11/03/2024	Inspector	Ann Bogan

1.0 Context

1. Site Location and Description.

The site consists of an existing detached two storey dwelling and garden fronting onto the R569 road, east of Kenmare Town Centre. The site backs onto a golf course and there are detached dwellings on the adjoining sites and a mix of

dwelling types in the wider area. A plant nursery/market garden adjoins part of the north-east boundary of the rear garden. The rear garden slopes down from 23m OD at the back of the house to 19m OD at the boundary with the golf course. The overall existing plot is 0.183ha in area, while the site for the proposed new dwelling is 0.121 ha

2. Description of development

The application submitted consisted of retention of the existing house as constructed and construction of a new dwelling in the rear garden. However, the planning authority requested further information and sought revised public notices relating only to the construction of the new proposed house and omitting the retention of the existing house within revised site boundaries, as it was constructed pre 1963 and did not require planning permission.

Revised public notice and site layout plan were received on 1st November 2023.

The application now consists of:

- Construction of a 228sqm two storey dwelling and garage in the rear garden (north) of the existing house, site area 0.121ha.
- A pumping station located to the rear (north) of the proposed house to pump waste water to the public sewer on the public road
- Creation of an access road to serve the new house and expansion of the existing vehicular entrance to create a shared entranceway to the public road.

Details of boundary treatments were also requested and were listed on the revised layout plan submitted by way of further information.

(Note: unsolicited FI was also received, on 11th October 2023, in response to third party submission)

3. Planning History.

None

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

Sustainable Residential and Compact Settlements: Guidelines for Planning Authorities, 2024

Section 3.3.4 density standards in Small and Medium Sized towns
Section 5.3.1 and SPPR1 relating to separation distances between opposing windows

Kerry County Development Plan 2022-2028

Volume 6 Appendix 1 Development Management standards

Appendix 2 Land Use Zoning

Kenmare Functional Area Local Area Plan 2010-16, as extended

- Site zoned existing residential

Draft Kenmare Municipal District Local Area Plan 2023-2029

- Site zoned existing residential

5. Natural Heritage Designations

- None in the vicinity of site.

2.0 Development, Decision and Grounds of Appeal

6. PA Decision

The planning authority decided to grant permission for Part b. of the original proposal, namely the construction of a new dwelling and associated entrance and services, subject to 14 conditions. (Part a. was omitted via further information).

The Planning Officer's Report concluded that the proposed development would not be visually obtrusive, would not seriously injure the amenities of the area and recommended that permission be granted.

County Archaeologist report: Site is partly within zone of notification around Recorded Monument Ke093 019, listed as a standing stone. Monument has been destroyed and area around it disturbed. No mitigation is required.

7. Third Party Appeal. Grounds in summary:

- Appellant lives in adjoining house (Oldchurch House), pattern of development in area is very low density, substantial houses on mature grounds
- Proposed development will have adverse impact on family home and depreciate value and enjoyment of home

- It is backland development, with large house crammed into garden of existing substantial house, at odds with pattern of development in area
- Area is zoned 'existing residential' and this does not imply any presumption in favour of development unless it would enhance character and amenity of area
- Kenmare Local Area Plans have policies regarding the relevant issues which are listed in table and within grounds of appeal: sustainable drainage, design quality and archaeology
- Overdevelopment, climate change and sustainable drainage: Proposed house and garage are very large, with large paved area, resulting in a reduction in permeable surfaces and reduced ability to deal with run-off from storms, soakaway unlikely to be adequate. Why no Sustainable Drainage System as required for new development in current LAP?
- Loss of residential amenity/privacy – overlooking: upper floor windows on front of new house will overlook appellant's bedrooms, ground floor rooms and patio. Upper floor room in [appellant's] house, which has a ridge height 7m higher than new house, will have direct view into bedrooms of new house, impacting on their privacy. Closest window is 20m, closer than the 22m permitted by regulations
- Proposed house does not follow building line of neighbouring houses.
- Loss of residential amenity - noise: Noise of vehicles so close to appellant's terrace would render it almost useless for relaxation and recreation
- Planting or screening will not mitigate effect on privacy or noise because of height and location of the development
- Archaeology: Development Plan and Local Area Plan maps show at least 1 archaeological site covers proposed development site. NIAH refers to it as a standing stone which stood to the north-east of the church. It must be properly assessed before planning permission is granted
- Loss of mature tree: Proposed development unnecessarily destroys important tree. Good practice is to avoid this, in line with Government targets to preserve biodiversity and County Development policy to preserve broadleaf tree cover.

- Proposed privately maintained pumping station to pump sewage effluent uphill to public sewer on road – public health implication, as well as concern re odour and noise adjacent to appellant's back garden and home.

8. PA Response

- None

9. Applicants Response: Agent responded on behalf of applicant:

- Existing family home is small (97sqm) and applicant's family need more space and propose to build a house in large rear garden
- Proposal is in keeping with pattern of development in area is some houses face onto public road and others behind, face onto golf course.
- Draft Local Area Plan identifies nearby 0.13 ha site (KE15) as having capacity for 2-3 houses, which gives indication of Co Councils aspiration for the area.
- Appellant enjoys view of golf course from his garden but also across applicants rear garden, but has no right to view over another's property.
- Trust of appeal is adverse impact on appellant's private dwelling. Oldchurch House has been a guesthouse and may be again in the future so cannot be assessed purely as a family home.
- Appellants opinion seems to be that if he can see proposed new house, it means a loss of privacy. Scheme design complies with all development standards including separation distance and privacy
- Proposed house is designed and sited, based on a topographical survey, to afford maximum privacy to existing house and neighbouring dwellings
- House size is comparable with others in the area and is not excessive
- Garage is designed to form visual buffer between proposed dwelling and appellant's property
- Windows in house are located to front and rear only, with only non-habitable first floor windows at gable ends

- The standard of a minimum distance of 22m between opposing first floor windows guided the design, even though the houses do not directly oppose each other and viewing angle is approximately 30 degrees and drawing submitted with appeal shows separation distance between nearest windows in appellants house and proposed house is circa 24m. Also note new standard in Compact Settlement Guidelines which require minimum of 16m between directly opposing windows.
- Three other neighbours have no objection to proposed dwelling
- Proposed access has adequate site distances and design
- Surface water disposal by soak pit is the accepted approach and in unlikely event of overflow site falls towards golf course and will not impact other development or public system

3.0 Environmental Screening

10. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

11. AA Screening

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

4.0 **Assessment**

4.1. Having examined the application and appeal details and all other documentation on file, after an inspection of the site and having regard to relevant local and national policies and guidance, I am satisfied that the issues to be considered are those raised in the appeal and that all other issues have been satisfactorily addressed by the planning authority. I consider the main issues of the appeal are as follows:

- Principle of the Development
- Residential Amenity
- Drainage issues
- Archaeology

4.2. **Principle of the Development**

- 4.2.1. The Sustainable Residential and Compact Settlements Guidelines 2024 support the National Planning Framework priority of achieving compact growth and set out density objectives for towns of varying sizes. The objective for small to medium sized towns such as Kenmare is ‘to support consolidation within and close to the existing built-up footprint’, with an edge of town density objective of 20-40 dwellings per hectare (dph) for new development.
- 4.2.2. The pattern of development in this area at the edge of Kenmare town varies from single houses in their own grounds fronting onto the regional road, such as on the existing house and its immediate neighbours, to small estates of detached and semi-detached houses. The area is zoned ‘existing residential’, in both the existing and draft local area plans, and the County Development Plan objective for this zoning is to provide for residential development and protection and improvement of amenity. It allows for ‘the protection of existing residential amenity balanced with new infill development’.
- 4.2.3. The proposed new dwelling in the rear garden will be on a site of 0.121ha, inclusive of the access road, leaving the existing house on a site of 0.062. Taking account of the national objectives and guidelines for compact growth cited above, the zoning of the area and the location of the site to the rear of an existing house, I am satisfied that the construction of a dwelling in this location is acceptable in principle and that

the existing house will have adequate private open space around it. The density is lower than national objectives but I consider this acceptable taking into account the location to the rear of an existing dwelling and the pattern of development in the area. I do not accept the appellant's assertion that it constitutes overdevelopment. Residential amenity issues are further considered below.

4.3. Residential Amenity

- 4.3.1. The appellant raises concerns about impacts of the proposed development on the amenity of his house and garden due to overlooking of his house and terrace by windows in the proposed house. The ground floor level of the proposed dwelling is located approximately 3.4m below the ground floor level of the existing dwelling on the site and 3m below the level of the neighbouring house to the west. The front of the proposed dwelling is located circa 25m from the rear of the existing house and circa 23m from the rear of the neighbouring dwelling. The Kerry County Development Plan requires a minimum of 22m between directly opposing first floor windows, while SPPR 1 of the Sustainable Residential and Compact Settlements Guidelines 2024 requires a reduced minimum of 16m between opposing windows serving habitable rooms above ground floor level, and less in certain circumstances.
- 4.3.2. The proposed house is not directly behind the neighbouring house, so the windows are not directly opposing. The field of view from one house to the other is very narrow due to the angle of the houses in relation to one another. The proposed garage blocks the view of the ground floor of the neighbouring house from the proposed house. Based on the documents submitted I believe a person standing at a first floor window would see the top half of the window in the other house, but the view would be at a very acute angle. I am satisfied that proposed development complies with the Development Plan and more recent national standards referenced above, (which supersede the Development Plan standards). The potential for overlooking between the two houses is very limited due to the distance, the angle of view, and the position and height of the garage and I conclude that the proposed development would not result in any significant negative impact or diminution of residential amenity.
- 4.3.3. The proposed house broadly lines up with the building line established by a row of houses to the west in the nearby Cilleden development, which also back onto the

golf course, and in my opinion, this is acceptable and does not have a negative impact on residential or visual amenity.

- 4.3.4. The position of the proposed garage and an existing wooden fence and existing trees and shrubs provide screening of the outdoor terrace directly to the rear of the neighbouring house. There are also a significant number of trees and shrubs along most of the boundary between the proposed dwelling and the garden of the neighbouring house, which providing screening. However there are some gaps in the planting along the boundary between the adjoining properties and screening between the adjoining gardens could be improved with some additional planting. I recommend inclusion of a condition requiring additional planting, including a requirement to provide suitable tree planting, which would compensate for the loss of the semi mature beech tree in the centre of the site, which is being removed to make room for the new dwelling.
- 4.3.5. Concerns are raised re the impact of noise from vehicles serving the proposed dwelling on the residential amenity of neighbouring residents. The existing houses front onto a busy regional road so there is likely to be background traffic noise experienced at present. The additional noise from vehicles serving the proposed house is unlikely to be out of keeping with the normal level of vehicular noise experienced in a residential area and in my opinion, it is unlikely to have a significant impact on residential amenity in the area.

4.4. Drainage Issues

- 4.4.1. Wastewater from the proposed dwelling is to be pumped from the rear of the site to the public sewer on the adjoining road, due to the significant level distance from the site to the road. A Tricel 2600 litre pump chamber with dual pumps is proposed, with the pumps operating every second time to extend the life of the pumps and to ensure a back-up is available if one of the pumps fails to operate. I consider this proposal to be acceptable in this situation, subject to condition requiring the provision of a minimum of 24 hour storage capacity in case of a power outage, in the interests of public health. The disposal of surface water via a soak pit as proposed is considered acceptable.

4.5. Archaeology

- 4.5.1. The County Archaeologist noted that the overall site is partly within the zone of notification around Recorded Monument KE093-019, listed as a standing stone. However, the monument is no longer in place and the ground around it has been disturbed. The NIAH includes a record from the mid 19th century of a standing stone in Killowen surrounded by a circular feature, possibly smaller stones, and indicates its location on a map as being in front of (south) and to the left (west) of the existing house. As the stone is no longer present and the ground has been disturbed by the construction of the existing house, as well as the fact that the proposed house is at a lower level and some distance away, I agree with the County Archaeologist's recommendation that no mitigation is required.

5.0 Recommendation

- 5.1. I recommend that permission for the development be granted.

6.0 Reasons & Considerations

Having regard to the Kerry County Development Plan 2022-2028 and the nature, extent and location of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be visually intrusive and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and development of the area.

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on 11 th October 2023, and on 1 st November 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
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	<p>carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The finished floor level of the proposed dwelling shall be in accordance with the site section drawing received on 25th August 2023.</p> <p>Reason: To regulate and control the layout of the development in the interest of residential amenity.</p>
3.	<p>No part of any garage or other exempted structure shall be erected within 2.5m of the centre of any boundary or adjoining property on either side of the proposed dwelling house</p> <p>Reason: In the interest of residential amenity</p>
4.	<p>Vehicular access to the site shall be located and designed in accordance with the Site Layout Map received on 25th August 2023.</p> <p>Reason: In the interest of traffic safety and visual amenity.</p>
5.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
6.	<p>The proposed pump shall have capacity for storage of effluent for not less than 24hours, based on full occupancy of the dwelling, in the event of a power outage. Details of same shall be submitted and agreed in writing with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of public health</p>
7.	<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>
8.	<p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>

9.	<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>
10.	<p>A revised landscaping layout shall be submitted to and agreed in writing with the Planning Authority showing landscaping of the site with suitable indigenous trees, shrubs and hedges and shall include details of boundary treatment, including additional planting along the western boundary of the site to provide improved screening of the neighbouring property.</p> <p>Reason: In the interest of residential amenity and to improve biodiversity in the area.</p>
11.	<p>Proposed garage shall be located and constructed in accordance with drawings and details submitted with the application.</p> <p>Reason: To regulate and control the layout of the development.</p>
12.	<p>The garage shall be used solely for use incidental to the dwelling house and shall not be used for the carrying out of any commercial activity or business or for human habitation.</p> <p>Reason: In the interest of residential amenity.</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.

Ann Bogan

Planning Inspector

26th March 2024

Appendix 1 Relevant policies and Objectives

Sustainable Residential and Compact Settlements Guidelines for Planning Authorities, 2024

3.3.4 Small and Medium Sized Towns (1500-5000

(i)The strategy for all small to medium sized towns is to support consolidation within and close to the existing built-up footprint.

Table 3.6 Areas and Density Ranges Small to Medium Sized Towns

Small / Medium Town Edge: The edge of small to medium sized towns are the lower density housing areas constructed around the centre, while urban extension refers to greenfield lands at the edge of the built-up area that are zoned for residential or mixed-use (including residential) development. It is a policy and objective of these Guidelines that densities in the range 25 dph to 40 dph (net) shall generally be applied at the edge of small to medium sized towns.

SPPR 1 - Separation Distances

It is a specific planning policy requirement of these Guidelines that statutory development plans shall not include an objective in respect of minimum separation distances that exceed 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level. When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms¹⁶ at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.

There shall be no specified minimum separation distance at ground level or to the front of houses, duplex units and apartment units in statutory development plans and planning applications shall be determined on a case-by-case basis to prevent undue loss of privacy.

In all cases, the obligation will be on the project proposer to demonstrate to the satisfaction of the planning authority or An Bord Pleanála that residents will enjoy a high standard of amenity and that the proposed development will not have a significant negative impact on the amenity of occupiers of existing residential properties. This SPPR will not apply to applications made in a Strategic Development Zone until the Planning Scheme is amended to integrate changes arising from the SPPR. Refer to Section 2.1.2 for further detail.

Kerry County Development Plan 2022-2028

Volume 6

Section 1 Development Management Standards and Guidelines

1.5.4.10 Minimum Separation Distance

Between directly opposing above ground floor windows (first floor), a separation distance of 22 metres should generally be observed for new, reciprocal overlooking housing, although this will also be informed by considerations such as typography, design, and housing type and mix.

Section 2 Land use zoning

R2 Existing Residential

Objective: Provide for residential development and protect and improve residential amenity

Description: For existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development. May also include a range of other ancillary uses for residential, particularly those that have the potential to foster the development of residential communities. These are uses that benefit from a close relationship to the immediate community, such as crèches, some schools and nursing homes. A limited range of other uses that support the overall residential function of the area may also be considered