

An
Bord
Pleanála

Inspector's Report ABP319055-24

Development	Retention of extended floor area etc. And retention of garden shed. Permission for rear extension with associated site development works.
Location	Emlagh West, Cooleen, Dingle, County Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	2360336.
Applicant(s)	James & Ann Sheehy.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party
Appellant(s)	James & Ann Sheehy.
Observer(s)	One Observation (1) Kathleen Sweeney & family.
Date of Site Inspection	18 July, 2024.
Inspector	Anthony Abbott King

1.0 Site Location and Description

- 1.1. The applicant site comprises a detached two-storey infill house and its curtilage located on the west side of 'Cooleen', a residential cul-de-sac in Dingle town.
- 1.2. 'Cooleen' comprises a streetscape of predominantly period terraced single-storey cottages, known as Emlagh Cottages, on the east side of the street; the end house in the streetscape is a two-storey structure. The majority of the period cottages have roof dormers. The period cottages are protected structures.
- 1.3. The streetscape on the west side of 'Cooleen' comprises detached predominantly 2-storey infill housing on the west side of the street and the front gardens of the single-storey cottages on the east side of the street separated from the cottage by the carriageway (potential infill development sites).
- 1.4. The subject house is located opposite no. 5 Emlagh Cottages. The subject site was originally part of the garden of this cottage.
- 1.5. The infill houses on the west side of the street are constructed on linear sites that have an east-west orientation and aspect onto Dingle Harbour.
- 1.6. The site is adjacent to an amusement park comprising visually prominent amusement equipment and other installations to the immediate west between the harbour area and "Cooleen".
- 1.7. The site area is given as 0.026 hectares.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - (a) Retention of extended floor area of an existing dwelling comprising additional building width, additional building height and attic accommodation.
 - (b) Retention of garden shed.
 - (c) Permission for rear extension with associated site development works.
 - (d) Permission for the installation of additional windows including attic level rear gable window and front and side roof lights.
 - (e) All ancillary site works related to the above.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following 5 reasons:

(A) Retention permission to retain additional floor area of an existing dwelling house comprising additional building width, additional building height and attic accommodation.

- 1. It is considered that the proposed retention of additional floor area of an existing dwelling house comprising additional building width, additional building height and attic accommodation, by reason of height, scale and proximity to houses in the vicinity, would seriously injure the residential amenities and depreciate the value of property in the vicinity. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.*
- 2. It is considered that the retention of the existing structure would be incompatible with the prevalent house type in the locality and would set an undesirable precedent for similar structures in this sensitive setting. The proposed development would contravene Objective D-ACA-3 of the Corea Dhuibhne Electoral Area Local Area Plan 2021-2027. The retention of the development would, be contrary to the proper planning and sustainable development of the area.*
- 3. The proposed development would contravene materially conditions attached to an existing permission for development on this site, specifically Nos. 3 and 9 attached to planning permission granted under Planning Register. No. 07/3915. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

(B) Retention permission to retain an existing garden shed

- 4. The proposed development would comprise the retention of a garden shed for use ancillary to an unauthorised dwelling house. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

(C)Planning permission to construct a single storey extension to the rear of the existing dwelling. (D)Planning permission to install additional windows comprising 1 no. 2nd storey gable window to the rear, and rooflights to the front and side of the dwelling and (E)all ancillary site works related to all of the above.

5. The proposed development would comprise the construction of an extension and the carrying out of elevational changes to an unauthorised structure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Kerry County Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

No objection.

4.0 Planning History

There is a complex planning history on the site with legacy issues unresolved.

- Under Reg. Ref. no. 07/3915 planning permission was granted for a two-storey dwelling house. Condition no. 3 and Condition no. 9 are relevant.

Condition 3 states:

The development shall be carried out in accordance with the plans and particulars received by the Planning Authority on 16/10/2007, revised on 29/02/2008 and further revised on 26/03/2008 except for the alterations and modifications specified in this decision.

Reason: To regulate and control the layout of the development.

Condition 9 states:

- (a) Proposed dwelling house shall be in accordance with the design drawing received on 26/03/08 except for the following modifications:*

- (i) Ridge roof height shall be reduced by 300mm
- (ii) Floor to Ceiling heights to ground and first floors shall be reduced to 2.4m

Revised elevations in compliance shall be submitted for approval to the Planning Authority within four weeks of the receipt of this decision.

- (b) *Roof shall be covered with slates which shall be either black, dark-grey or blue-black. The colour of the ridge tile shall match the colour of the roof.*
- (c) *All external finishes shall be neutral in colour, tone and texture.*
- (d) *The use of white uPVC shall not be permitted on windows, doors, fascias, soffits, guttering.*

Reason: To integrate the structure into the surrounding area.

- Under Reg. Ref. no: 09/995 retention permission to retain additional floor area of the existing dwelling house, comprising additional building width, additional building height and attic accommodation was refused for 3 reasons.
 1. *It is considered that the proposed retention and completion of the dwelling house on site would by reason of height, scale and proximity to houses and land in the vicinity seriously injure the residential amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*
 2. *It is considered that the proposed structure would constitute an incongruous feature in this area. Retention of the existing structure would be incompatible with the prevalent existing house type in the locality and would set an undesirable precedent for similar structures in this sensitive setting. The proposed development would therefore interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL 11-1 of the Kerry County Development Plan 2009-2015. The retention of the development would, be contrary to the proper planning and sustainable development of the area.*
 3. *The proposed development would contravene materially conditions No. 3 & 9 of Planning Reg. No. 07/3915, an existing permission for development on this*

site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

- Under Reg. Ref. no.10/847 (ABP08-237911) planning permission was refused for the removal of existing over hangs on both sides of the dwelling for 3 reasons.
 - 1 *It is considered that the proposed retention of the dwelling house on site, by reason of height, scale and proximity to houses and land in the vicinity, would seriously injure the residential amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*
 - 2 *It is considered that the proposed structure would constitute an incongruous feature in this area. Retention of the existing structure would be incompatible with the prevalent existing house type in the locality and would set an undesirable precedent for similar structures in this sensitive setting. The proposed development would contravene Objectives BH-1 and BH-2 of the An Daingean Local Area Plan 2006. The retention of the development would, be contrary to the proper planning and sustainable development of the area.*
 - 3 *The proposed development would contravene materially conditions No. 3 & 9 of Planning Reg. No. 07/3915, an existing permission for development on the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

ABP upheld the refusal of permission for the following reasons and considerations (dated 18/03/2011):

1. *The overall built form, in particular the excessive ridge height to be retained would be visually obtrusive and visually overbearing when viewed from the public domain, in particular from Dingle Harbour and the public open spaces that make up the water front of Dingle, which is located to the west of the site. It is considered that the development proposed to be retained would, therefore, be in conflict with An Daingean Local Area Plan, 2016-2012, in particular objective A2 which seeks to improve the visual amenities of the harbour area. It is considered that the development to be retained would, therefore, be determinantal to the visual character of the harbour area in a*

manner that would be contrary to the said objective, would seriously injure the visual amenities of the area, would result in an undesirable precedent for further such development of this scale and would be contrary to the proper planning and sustainable development of the area.

2. *The development proposed to be retained would contravene materially a condition attached to an existing permission for development on this site, namely condition number 9 attached to the permission granted by Kerry County Council on the 2nd day of May, 2008 under planning reference number 07/3915, which requires the revisions including a reduction in height to be made to the built form of the dwelling house for which permission was sought. The development if permitted in its current form would, therefore, be contrary to the proper planning and sustainable development of the area.*

Relevant permissions adjacent

- Under Reg. Ref. no: 20/717 planning permission was granted for a two-storey plus habitable attic level contained within a mansard style roof (double pitch with mansard style between the front and rear pitches) to the north-east of the subject dwelling (the dwelling house has been constructed).
- Under Reg. Ref. no: 20/724 planning permission was granted for a two-storey plus habitable attic level contained within a mansard style roof on the site adjoining to the northeast (unbuilt).

5.0 Policy and Context

5.1. Development Plan

The local policy framework is provided by the Kerry County Development Plan 2022-2028. The relevant policies and objectives in the development plan relate to the functional area of Kerry County Council and are set-out below:

Volume 1 (Written Statement)

- Chapter 3 (Core and Settlement Strategy), Section 3.10.2 of the Kerry County Development Plan (Volume 1) categorises Dingle / Daingean Uí Chúis, as a regional town. Regional towns are defined as follows: *Towns which provide a*

housing, employment, or service function serving a local region within the county. The category is broad and ranges from large commuter towns to more peripheral towns.

- Chapter 4 (towns and Villages) Section 4.3.1 (Sustainable Infill and Brownfield Development) is relevant and *inter alia* states:

It is an objective of this plan to encourage the redevelopment and renewal of town and village cores rather than continual expansion and sprawl of settlements out into the countryside. A target of at least 30% of new housing should be delivered within the existing built-up areas of settlements on infill and/or brownfield sites.

- Chapter 8 (Gealtacht Areas, Culture and Heritage) Section 8.4.3 (Architectural Conservation Areas (ACA's) is relevant and *inter alia* states:

Architectural Conservation Areas (ACAs) are specially chosen for their contribution to the character and heritage of County Kerry.....An ACA may or may not include Protected Structures. The Council recognises the significant role the county's ACAs play in terms of unique and attractive places, visual amenity, sense of place and tourism and seeks to ensure their special character is protected and enhanced in all development proposals..... This designation allows the evolution and development of an area while maintaining its essential character and distinctiveness.

The following is relevant. It is the objective *inter alia* of the Council to:

KCDP 8-44	Ensure developments in an ACA have a positive impact on the intrinsic character of the area, respect the existing streetscape and layout, and are compatible in terms of design, materials, traffic, views, and intensity of site use.
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Volume 6 (Section 1.0)

Development Management Standards and Guidelines is relevant.

Paragraph 1.5.6.1 (Extensions to Dwellings) is relevant and *inter alia* states:

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.

Furthermore, Paragraph 1.5.6.1 provides for guidance in the assessment of alterations at roof / attic level.... *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.*

Volume 6 (Section 2.0)

Land-use Zoning is relevant. Paragraph 2.3 (Land-Use Zoning) *inter alia* states: *within the functional area of County Kerry, lands are zoned for particular purposes within the settlement plans contained in this Development Plan and in the local area plans.*

The subject site is zoned Objective R2 (existing residential) in the Corea Dhuibhne Electoral Area Local Area Plan 2021-2027 : *Provide for residential development and protect and improve residential amenity.*

Paragraph 2.3.1 of the development plan provides a description of the Objective R2 zoning and is relevant: *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.*

Corea Dhuibhne Electoral Area Local Area Plan 2021-2027

The site is located on lands zoned Objective R2 (Existing Residential – Pg. 80) within an Architectural Conservation Area (ACA – Pg. 82) as designated in the local area plan.

Other Relevant Policy Objectives

- Objective D-RES-1 states: *Facilitate the development of residential units on vacant, derelict and infill sites.*
- Objective D-ACA-3 states: *Preserve the town's architectural heritage and encourage development that is designed in a manner that is in keeping with the scale, character and pattern of the existing built fabric and urban form. New developments must be designed to a high architectural standard and must take cognisance of local design features and materials.*

5.2. EIA Screening

5.3. The proposed development is not within a class where EIA applies.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, prepared by Warren Reidy Planning Design, are summarised below:

- The subject dwelling is located on the northside of Cooleen (Cuilin) in Dingle town. The house has been in situ for approximately 15 years. It is occupied by the appellants as their permanent place of residence.
- Cooleen has only a few vacant plots along the entire length of the cul-de-sac. There are only 3 vacant plots between the subject site and existing houses to the southwest. The adjoining site has been granted planning permission between the subject dwelling and a two-and-a half-storey dwelling to the north-east.
- Under Reg. Ref. no. 07/3915 the appellants secured planning permission for a two-storey dwelling on the 2nd May 2008. The house was constructed in 2009.

Under Reg. Ref. no: 07/3015 (ABP08-237911) retention permission was refused. The reasons for refusal were due to excessive ridge height which would be visually overbearing when viewed from Dingle Harbour. And the development to be retained would materially contravene a condition attached to an existing permission.

- Under Reg. Ref. no: 10/847 an application to remove the existing overhangs from both sides of the dwelling was refused permission for three reasons. The reasons for refusal related to (1) the height, scale and proximity of the subject dwelling to houses in the vicinity, (2) the existing structure is incompatible with existing house types in the locality and, (3) the development would materially contravene conditions attached to an existing permission.
- The substantive variations to the subject dwelling from that granted under Reg. Ref. no: 07/3915 are as follows:
 - The footprint of the dwelling is 95.2 sqm. as opposed to the 82 sqm. permitted due to the dwelling being wider by 1030 mm (the total available floor area of the as-built dwelling is 263.1 sqm.);
 - There is adequate space for attic rooms albeit the attic is presently uninhabitable (with an area of 72.7 sqm. achievable due to the increased height of 885mm above that permitted under the parent permission).
- The floor area of the houses to the north east recently granted planning permission by the local authority have similar floor areas 198 sqm. (unbuilt) and 261 sqm. (built), respectively. The permitted spatial relationship to the northeast including height, scale and massing is illustrated in Figure 1 and Figure 3 (3D contiguous elevation) of the appeal statement.
- The appellants claim that the subject dwelling house does not have an adverse impact on the properties to the northeast given that these properties have similar scale and bulk. Furthermore, it is claimed the development should not be refused on the grounds of setting an undesirable precedent for similar structures in this sensitive setting.

- It is claimed that the recently granted properties to the northeast in combination with the subject dwelling house complement each other and demonstrate the evolution of building types in the area in compliance with policy objective D-ACA-3.
- The property owner to the southwest has objected to the subject dwelling as it is built from gable to gable for the full width of the site. Reg. Ref. no: 07/3915 permitted the construction on the southwest boundary. The appellants claim the dwelling house as constructed has no additional negative impact on the property to the southwest. However, the appellants acknowledge the overhang of the roof on the gable elevations. The overhang will be removed subject to Board approval as shown in Drawing nos. 23-037300600 & 23-037300700. The appellants are willing to except a condition to ensure same.
- In the matter of the shed to be retained, the planning authority could not consider retaining a shed where the existing dwelling house is considered unauthorised development. The appellants request the Board to grant permission for the shed, which is a necessary ancillary feature to most active homes, given that the main dwelling house subject to condition is a congruent style dwelling.
- In the matter of proposed windows/rooflights to the attic floor and single-storey extension, the planning authority could not previously consider retention as the dwelling house was considered unauthorised development. The appellants request the Board to grant permission for additional rooflights and windows to the attic floor to make it habitable.
- Finally, in the matter of Conditions 3 & 9 of the permission granted under 07/3915 the appellants acknowledges the contravention of these conditions. However, in the intervening 16 years, the subject dwelling has been in existence for 15 years and the planning authority has granted dwelling houses that would similarly contradict the reasons for refusal.

6.2. Applicant Response

N/A

6.3. Planning Authority Response

None recorded to date.

6.4. Observations

There is one number observer, Kathleen Sweeney & family, Collinamuck, Rosscahill, County Galway. The observation is summarised below.

- The appellants were permitted in 2008 subject to condition nos. 3 & 9 to build a 2-storey house 8.5m high with a floor area of 164 sqm. The applicant contravened Condition no. 3 of the permission. The observers family, who are the owners of the garden to the immediate south of the subject dwelling house, have been active in relation to the subject development since 2007 causing a burden of stress.
- Cooleen is a historical area of Dingle town. The vacant plots referred to in the appeal statement or in fact the gardens of the houses on the east side of the street. The site used by the appellants to build their house was the garden of the family home of one of the appellants. The garden across from the observers family home to the south of the subject dwelling is a garden not a vacant plot. The observer appends historic and contemporary photographs annotated to illustrate the spatial relationship.
- It is claimed that the appellants are making a mockery out of the planning system by reason of their non-compliance with the development originally permitted and the subsequent continual applications for retention. The subsequent retention applications have been refused to date supporting the observers belief in planning law albeit at a huge toll on the observers family. The observer considers the level of application vexatious.
- The dwelling house as constructed overhangs (gable roof) the garden of the observers property. The gable of the subject house now represents the shared property boundary. The location of the subject dwelling house on the shared property boundary and the overhang of the roof depreciates the value of the observer's family property and compromises its development potential.

- The observer attaches a letter dated 12th May, 2009 from the appellant, James Sheehy, to solicitor Michael Keating (contained within planning file 10847), which gives an undertaking to remove the overhangs (at the appellants own expense) once his property have been developed. The overhangs have not been removed to date. The observer notifies the Board of the bad faith of the appellant in this matter and to caution in regard to future actions based on past behaviour.
- In the matter of Planning Reference 10847, the observer considers that the previous application to retain the unauthorised dwelling house as constructed and to remove the overhangs is contradictory: *To retain the existing dwelling house as constructed is by its nature to retain the overhangs...* The observer considers the premise to lack integrity and to represent a vexatious planning application.
- The appellants have constructed a building for the full width of their plot without external access from the street to the rear garden. In the absence of an external route within their own property holding the appellants have used the observer's family garden to access the appellants rear garden for fuel access without permission. The observer has now stopped this trespass by erecting a private property sign.
- The observer requests an engineer's report to determine the extent of their property that has been removed, as the original boundary wall is no longer extant and has been replaced by the gable wall of the subject dwelling. The observer does not consent to any application or appeal to retain any property that is existing inside their property. It is claimed that the overriding objection is that the property as presently built is encroaching the observers property.

7.0 Assessment

- 7.1. The following assessment covers the points made in the appeal submission and is an overall consideration of the proposed development and the development to be retained. I have reviewed the relevant documentation and conducted a site visit. There are no new matters for consideration.

- 7.2. The applicant proposes to retain an existing dwelling house with an overall floor area of 271.20 sqm. (including the retention of a rear garden shed) and roof ridge apex of 9.385m. The dwelling house was not constructed (circa. 2009) in accordance with the planning permission granted in 2008. The footprint of the house extends for the full width of the site with gable roof overhangs (bargeboard and soffit) that project over the shared property boundaries. The roof structure and overall building height (regulated at 8.5m) are not in compliance with the development as permitted by way of condition.
- 7.3. The appellant has applied for the retention of an overall floor area of 107.20 sqm. The appellant has previously been refused permission for the regularisation of the development by the local authority and An Board Pleanála. Additionally the appellant has applied to construct a single-storey extension of approximately 10 sqm to the rear of the dwelling house and to provide attic level fenestration to light second-floor bedrooms to be retained.
- 7.4. The planning authority refused the proposed development and the development to be retained for five reasons. The first, second and third reasons for refusal relate to the development to be retained.
- 7.5. The first reason for refusal relates to the height, scale and proximity of the subject dwelling house to other houses in the vicinity, which would seriously injure the residential amenities and depreciate the value of property in the vicinity. The second reason for refusal relates to the incompatibility of the subject dwelling with the prevalent existing house type in the locality, which would set an undesirable precedent for similar structures in this sensitive setting. The third reason for refusal relates to contravention of the conditions of the original permission granted under Register Ref: No. 07/3915.
- 7.6. The fourth and fifth reasons for refusal relate to the proposed development. The fourth reason for refusal relates to the garden shed, which would represent a use ancillary to an unauthorised dwelling house. The fifth reason for refusal relates to a rear single-storey extension and attic level fenestration, which would permit the construction of an extension and the carrying out of elevational changes to an unauthorised structure.

7.7. The grounds of appeal principally relate to the timeframe the unauthorised dwelling house has been in situ (circa. 15 years), the evolution of the built environment in “Cooleen” in recent years, in specific the permission granted for two dwelling house of similar scale to the northeast of the subject dwelling, and the benign impact of the subject dwelling on the property to the south subject to the removal of the gable roof overhang. The assessment is structured under the following headings:

- Zoning
- Architecture Conservation Area designation
- Compact Growth
- Height, scale and massing of the existing dwelling house
- Extension of existing dwelling house and attic level fenestration.
- Harbour views
- Garden shed
- Other matters

Zoning

7.8. The subject site is zoned R2 (Existing Residential) in the Corea Dhuibhne Electoral Area Local Area Plan 2021-2027. The zoning objective provides for residential development and protection and improvement of residential amenity. The Kerry County Development Plan 2022-2028, (volume 6), Section 2.0 provides a description of the R2 zoning objective, which *inter alia* provides for existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development.

7.9. The proposed development for modifications to an existing dwelling house and the development to be retained, comprising an unauthorised dwelling house, are a permitted use class under the residential zoning objective.

Architecture Conservation Area (ACA)

7.10. The subject site at “Cooleen” and the immediate streetscape(s) are located within an Architecture Conservation Area (ACA). Objective D-ACA-3 of the Corea Dhuibhne Electoral Area Local Area Plan 2021-2027 *inter alia* provides for the preservation of

the town's heritage and encourages development that is designed in a manner that is in keeping with the scale, character and pattern of the existing built fabric and urban form.

- 7.11. There is a protected streetscape of terraced cottages on the east side of "Cooleen"-Emlagh Cottages. The following assessment *inter alia* will interrogate the compatibility of the development to be retained with the above conservation policy objectives.
- 7.12. The application assessed under 07/3915 (original permission) was adjudicated by the planning authority with reference to the receiving environment. The planning case officer considered given the urban location and residential zoning of the land that the site could take a ridge roof height of 8.5m. The appellants built a dwelling house in contravention of their planning permission with a ridge height of 9.385m, which they now wish to retain. Acknowledging that they constructed their house in contravention of their permission conditions.
- 7.13. The Kerry County Development Plan 2022-2028, Chapter 8 (Gealtacht Areas, Culture and Heritage), Section 8.4.3 (Architectural Conservation Areas (ACA's), recognises the significant role the county's ACAs play in terms of unique and attractive places, visual amenity, sense of place and tourism and seeks to ensure their special character is protected and enhanced in all development proposals. However, this designation allows the evolution and development of an area while maintaining its essential character and distinctiveness.
- 7.14. I conducted a detailed site visit to "Cooleen". I consider that "Cooleen" represents a unique and attractive place of special character in transition. I do not consider that development to date within the architectural conservation area designation has significantly compromised its essential character and distinctiveness.

Compact Growth

- 7.15. The Kerry County Development Plan 2022-2028, Chapter 3 (Core and Settlement Strategy), Section 3.10.2 categorises Dingle / Daingean Uí Chúis, as a regional town. Regional towns are defined as towns which provide a housing, employment, or service function serving a local region within the County.
- 7.16. The Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (January 2024) set national planning policy and guidance in

relation to the planning and development *inter alia* for urban settlements with a focus on sustainable residential development and the creation of compact settlement.

7.17. The Guidelines expand on higher-level policies of the National Planning Framework, setting policy and guidance that include development standards for housing. Chapter 5 (Development Standards for Housing) provides *inter alia* guidance for separation distance, private open space, public open space, car parking, bicycle parking and storage and daylight standards. The following assessment is informed by the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities.

7.18. The appellants proposes to provide additional accommodation on site to provide a total of 5 bedrooms at first and second floor level. The Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (January 2024) SPPR4 requires a minimum of 50 sqm. of private open space for 4 bedroom + houses. The rear garden of the subject house has a south-west orientation and can accommodate the relevant open space standard.

Extension of existing dwelling house and attic level fenestration

7.19. The Kerry County Development Plan 2022-2028, Volume 6, Section 1.0 (Development Management), Paragraph 1.5.6.1 (Extensions to Dwellings) provides guidance in the assessment of rear / side extensions, which will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining. The appellants have applied for a modest single-storey extension (3415mm x 3600mm / approximately 10 sqm.) to the rear of the dwelling house. I consider that the proposed extension would satisfy the criteria listed above.

7.20. The appellants also propose elevation and rooflight fenestration in order to facilitate attic level accommodation. I note the provision of the Kerry County Development Plan 2022-2028, Volume 6, Section 1.0 (Development Management), Paragraph 1.5.6.1 (Extensions to Dwellings), which provides guidance in the assessment of alterations at roof / attic level. I consider that the fenestration changes proposed are in compliance with the stated provisions and are acceptable in principle.

Height, scale and massing of the existing dwelling house

- 7.21. The appellants claim that the subject dwelling house does not have an adverse impact on the properties to the northeast given that these properties have similar scale and bulk. It is claimed the current application should not be refused on the grounds of setting an undesirable precedent for similar structures in this sensitive setting, as the built form has evolved since the subject dwelling was constructed circa 2009.
- 7.22. The planning case officer notes that recent new residential developments to the northeast have been permitted with a ridge roof height of 8.5m in keeping with the original permitted development on the subject site.
- 7.23. The planning case officer states that during the course of the assessment of Planning Register Ref: no. 07/3915 the appellants were advised to reduce the ridge roof height in order to avoid a refusal of the application. The appellants put forward a reduced height that was further reduced by Condition 9 of Planning Register Ref: no. 07/3915 to 8.5m.
- 7.24. In the original planning assessment, the planning case officer considered given the urban location and residential zoning of the land that the site could take a ridge roof height of 8.5m. The applicants proceeded to construct a dwelling house 9.385m in height.
- 7.25. It is noted that the subject house to be retained exhibits a standard "T" form pitched roof.

Houses permitted to the northeast

- 7.26. In the matter of the permitted houses to the northeast, I have reviewed the permitted applications on-line. The adjoining permitted house to the northeast granted under Register Ref: no. 20/724 would have a mansard style roof, which would provide for a three-storey dwelling house internally (196 sqm.). I consider that the bulk, scale and massing of the adjoining permitted house is similar to the subject house to be retained. However, I note that the maximum roof height of the permitted adjoining house is 8.5m. I further note that the second floor accommodation is facilitated by a mansard style roof construction with an internalised flat roof - axonometric view.
- 7.27. The house constructed to the northeast permitted under Register Ref: no. 20/717 is a substantial detached dwelling house (261 sqm.). I consider that the visual bulk, scale and massing of this property is greater from certain vantage points than the

subject house to be retrained. The footprint of this dwelling house is facilitated *inter alia* by a wider plot width (site area given as 0.0354 hectares). The height of the constructed house to the northeast is 8.5m owing to a complicated double pitch roof structure, comprising a pitch roof to the front and rear with side gables, containing an internal valley / plateau with mansard style roof elevations between the sides gables.

- 7.28. It is considered that the subject house to be retained is to ridge height (9.385m) higher than the permitted dwelling houses to the northeast (8.5m) by reason of its standard pitched roof construction. However, the bulk, scale and massing of the three properties are similar. The visual impact of the constructed house to the northeast granted under Register Ref: no. 20/717 is from observations points to the north and south more visually prominent than the subject house given the roof structure and footprint.
- 7.29. I consider that the subject house to be retained is consistent with the pattern of development in "Cooleen" as it has evolved to address the challenge of compact growth. I further consider that the subject dwelling to be retained and to be extended would not have an adverse impact on the existing residential and visual amenities of properties in the vicinity.

Harbour Views

- 7.30. "Cooleen" is visible from the Dingle harbour area. I do not consider that the development to be retained and the proposed development have / would have an adverse impact on the visually appreciation of the harbour area, which is characterised by an eclectic mix of uses and structures. The subject site is adjacent to an amusement park, comprising visually prominent amusement equipment and installations. The amusement area is located to the immediate west between the Harbour and "Cooleen" screening the subject house.

7.31. Retention of garden shed

- 7.32. The appellant requests the Board to grant permission for the existing garden shed, which is claimed is a necessary ancillary feature to most active homes. The garden shed is modest in scale, comprising a footprint of approximately 8 sqm. (2850mm x 2850mm) and an apex height of 2.5m and is located in the rear garden. It is clearly ancillary to the main dwelling. The retention of the garden shed is acceptable.

Other Matters

- 7.33. In the significant matter that the development to be retained and by association the proposed development would materially contravene a condition attached to a previous permission on site (07/3915), I consider that the intervening timeframe from the initial grant of planning permission to the current retention / permission application is material.
- 7.34. In specific Condition Number 9, attached to the permission granted by Kerry County Council on the 2nd day of May, 2008 under planning resister reference number 07/3915, required significant material revisions to the development proposal including a reduction in height (regulated at 8.5m) to be made to the built form of the dwelling house for which permission was sought.
- 7.35. The appellants built the dwelling house in contravention of this condition by their own admission in the appeal statement. In the interim the planning authority did not take successful enforcement action to ensure compliance with Condition 9. I consider that resolution of this legacy matter is outstanding.
- 7.36. The observer claims that their overriding objection is that the subject property as presently built is encroaching on their property. The observer requests an engineer's report to determine the extent that their property has been removed, if any, as the original boundary wall is no longer extant and has been replaced by the gable wall of the subject dwelling. I do not consider this a planning authority matter per se.
- 7.37. The Development Management Guidelines for Planning Authorities (2007) Section 5.13 (Issues relating to title to land) *inter alia* states that the planning system is not a mechanism for resolving disputes about title to land these are ultimately matters for resolution in the Courts.

Conclusion

- 7.38. I consider that the built envelope of the dwelling house as constructed with the omission of the over-hang gable roof structure, comprising of gable barges and soffits extending beyond the shared property boundary, is acceptable in principle. The appellants state that they are willing to reconfigure the over-hang of gable barges and soffits so that they are proximately flush with the boundary. This can be dealt with by way of condition.
- 7.39. **The Appropriate Assessment Screening**

The proposed development comprises a domestic extension in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

- 8.1. I recommend a grant of planning permission subject to condition for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the residential zoning objective and the pattern of development in the vicinity of the applicant site, it is considered that the proposed development and the development to be retained would not have a significant adverse impact on the amenities of adjoining residential properties, would provide a reasonable standard of accommodation on site, would satisfy the objectives of the Sustainable Residential Development and Compact Settlement Guidelines 2024, would be in compliance with the policy framework provided by the Kerry County Development Plan 2022-2028 for domestic extensions and the provision of accommodation at roof level, would be compatible with the policy objectives of the Corea Dhuibhne Electoral Area Local Area Plan 2021-2027, including policy objective D-ACA-3, and, as such, would be consistent with the proper planning and sustainable development of the areas.

10.0 Conditions

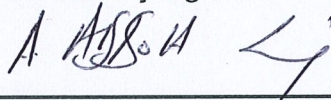
1.	The development to be retained and the proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be 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
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	<p>accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development (rear single-storey extension and attic level fenestration), the developer shall submit for the written agreement of the Planning Authority revised elevation and section drawings providing for the following modification:</p> <p>(i) The redesign of the roof structure in order to remove the overhang of the existing barge board and soffit on the shared property boundary.</p> <p>The works to remove the roof overhang shall be completed prior to the occupation of the ground floor extension.</p> <p>Reason: in the interests of residential amenity and orderly development.</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>Details of the external finishes of the proposed extension 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>
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</p>

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.

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.

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.



Anthony Abbott King
Planning Inspector

20th September 2024