



An
Bord
Pleanála

Inspector's Report ABP-319128-24

Development	Extension to rear and associated site works.
Location	Kilfenora, Fenit, Tralee, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2360260
Applicant(s)	Stephen and Hazel Burke
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Padraig Moriarty and Enda Maguire
Observer(s)	None
Date of Site Inspection	19 th August 2024
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.072 ha., is located immediately to the south of the R558 Regional Road (part of the designated Wild Atlantic Way) linking the town of Tralee with the designated district town of Fenit, in County Kerry. The site is approximately 2.5km due east of Fenit, on the shores of Tralee Bay. Access to the site is from both the R558 and a short loop laneway off the R558 close to the Tankard Bar & Restaurant.
- 1.2. There is an existing single storey cottage on the site with plastered façade, flat roof single storey extension to the rear and a detached stone shed adjacent to the western boundary of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of existing flat roofed rear extension and partial demolition of existing storage shed to the southwest (total gross floor space of demolition 25. 74sq.m). The proposed partial demolition of the shed would provide for an enclosed patio area and retain a physical boundary to the site on its western edge.
- 2.2. It is proposed to remove existing slate roof finish and replace with new roof finish, erect new rear extension, part single and part two storey. The proposed flat roof over the two storey extension sits below the existing ridge line of the house and the finished floor level of the extension is proposed to be 600mm below the existing finished floor level.
- 2.3. It is proposed to construct new covered walkway along part front and west side of existing dwelling, refurbish existing dwelling replacing all doors and windows, create new off-street parking to the west side of the dwelling and all ancillary site works associated with the development.
- 2.4. There is existing mains sewer connection and surface water is proposed to discharge to the surface water sewer.

3.0 Planning Authority Decision

3.1. Decision

On the 31 January 2024 the planning authority decided to grant permission subject to nine conditions.

Conditions are generally of a standard nature, conditions of particular relevance to this appeal:

Condition no. 2 materials following demolition shall be disposed of to an authorised landfill site or otherwise utilised in an authorised manner.

Condition no. 4 restriction on further extensions and/ or additional structures (i.e. tent, awning, shade, greenhouse, garage, store, shed or other similar structure) without the prior grant of planning permission.

Condition no.5 materials and finishes.

Condition no. 9 landscaping.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information requested including:

- Detailed tree/screening survey indicating the existing of existing screening and proposed to prevent any potential of overlooking of neighbouring properties.
- Cross section drawings north/south and east/west through the subject site indicating all road and ground levels and proposed finished ground levels.
- Proposals to ensure that vehicles can connect onto the laneway and not onto the regional roadway.
- Screens out need for EIA taking into account the small-scale development project and considers there is no real likelihood of significant effects.
- Appropriate Assessment Screening concludes that there is no likely potential for significant effects of Natura 2000 sites.

Following receipt of further information indicates that they are satisfied with the revisions to the proposed parking area which prevents direct access onto the regional roadway.

Recommendations contained in the report by the qualified arborist will be conditioned in order to avoid overlooking of neighbouring properties.

Calculation of financial contribution €360.00.

3.2.2. Other Technical Reports

- None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

A third-party observation from Padraic Moriarty and Enda Maguire. The concerns raised are similar to those raised in the grounds of appeal.

4.0 Planning History

Property fronting onto the R558 to the east of the subject site Kay/Dee Cottage, Kilfenora, Tralee, Co. Kerry

02/2555 Planning permission refused to Fiona Collins and Paul Mooney (October 2002) for the renovation and extension over rear of existing dwelling, consisting of a dormer type 2 no. bedroom extension.

- Reason: It is considered that the scale, bulk and height of the proposed extension would seriously injure the residential amenities and depreciate the value of property in the vicinity by reason of overshadowing and light deprivation. The proposed development would therefore be contrary to the proper planning and sustainable development.

01/3485 Planning permission refused (March 2002) for the renovation and extension over rear of existing dwelling, consisting of a dormer type 2 no. bedroom extension. (Documents not available on ePlan).

Referred to planning application at appellant's property Penzac's, Kilfenora, Fenit, Tralee, Co.

04/3981 ABP PL 08.213866 Permission granted (January 2006) to Padraig Moriarty and Enda Maguire to retain elevational changes, construct new kitchen window to side gable, change external finish of house from stone facing to plastered finish at Kilfenora, Fenit, Tralee, Co. Kerry.

- Condition no. 3. The proposed kitchen window in the eastern gable elevation of the house shall be omitted from the development. Within six months of the date of this order, the eastern gable elevation of the house shall be plastered and painted to match the front elevation of the house. Reason: In the interest of visual amenity.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Rural area under significant urban influence

11.6.3.1 Visually Sensitive Areas

Visually sensitive landscape areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation. These areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area. The County enjoys both a national and international reputation for its scenic beauty. It is imperative in order to maintain the natural beauty and character of the County, that these areas be protected.

Protected view South – R558

Views and Prospects

It is an objective of the Council to:

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

KCDP 11-78 Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

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

11.6.4 Development in Designated Areas

5.7 Renovation and Restoration of Existing and Vacant Buildings Situated in Rural Areas.

KCDP 5-30 Facilitate and support the objectives and actions of the plan “Housing for All, a New Housing Plan for Ireland” to tackle vacancy and the efficient use of existing housing stock in relation to vacant, derelict structures including heritage buildings.

Other:

Building a House in Rural Kerry Design Guidelines

5.2. Natural Heritage Designations

The subject site is within approximately 35metres of the designated Tralee Bay and Magharees Peninsula, West to Cloghane SAC, Proposed Natural Heritage Area Site Code 002070 and Tralee Bay Complex SPA Site Code 004188.

5.3. EIA Screening

See Appendix 1 - Form 1 attached.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal has been received from the residents, Padraic Moriarty and Enda Maguire, of Penzac's the property to the south of the subject site. The grounds of appeal can be summarised as follows:

- Determinantal impact on privacy
- Overlooking
- Devaluation of property

6.2. Applicant Response

- Assert that the appeal lodged is frivolous, lacks merit, substance and fails to provide any substantial grounds for contesting the granted planning permission. Request that the appeal reviewed as they consider it should be dismissed by the Board for the following reasons:
 - the appeal has a lack of factual basis supported by accurate imagery
 - non relevance of the argument of the appeal
 - the planning applications adherence to regulatory standards
 - inaccuracy of materials/statement within the appeal
 - the proposal enhances the current scenario in terms of privacy rather than exacerbating it.

I note the appellant expands on each of the reasons provided above in an accompanying report with attached appendices, including Appendix A - copy of submitted Site Sections, Appendix B - Copy of Planner's reports, Appendix C - Site Survey prepared by Paul Casey B.E Civil Engineering and Land Surveying, Appendix D - copy of Arboricultural Assessment & Report and Appendix E - Letter of professional opinion on potential devaluing of property due to proposed extension.

6.3. Planning Authority Response

- None received.

6.4. Observations

- None

7.0 Assessment

7.1. The development proposal subject to this appeal comprises the refurbishment and extension to an existing vacant house located in a visually sensitive rural area along the designated Wild Atlantic Way coastal route. The development plan outlines in section 5.7, that the planning authority shall give priority and positive consideration to the renovation and restoration of existing structures and vacant buildings in the rural countryside subject to the scale and architectural treatment of proposed works being sympathetic to the character of the original structure and the surrounding area including adjoining or nearby development. I consider that the proposed renovation and restoration works, including part one and part two storey rear extensions, to be strongly contemporary in form whilst sympathetic to the character of the existing structure in terms of retaining the principal form and ridge height of the building to the road frontage. From my site visit I note that the immediate area is characterised principally by single storey structures with a limited number of dormer extensions at second floor level, please also refer to planning history section 4.0 with respect to previous refusal of a dormer type extension east of the subject site. I consider, given the topography of the site and the proposed stepping down of finished floor levels to the rear that the two-storey extension can be considered subject to impact on residential amenity, please see section 7.3 of my report. Furthermore, I am of the view that the proposed use of the proposed grey timber cladding and charred/stained black timber cladding to the proposed part two and part single storey extension would help break the two-storey elevation visually and allow the new two storey element to be read principally as an extended roof element with angled light well set back over the proposed kitchen and dining area. Therefore, having regard to the

above assessment of the scale and architectural treatment of the proposed works in conjunction with the policy direction provided in the development plan and objective KCDDP 5-30 which seeks to tackle vacancy and the efficient use of existing housing stock I consider the proposed renovation and extension acceptable in principle.

7.2. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Impact on established residential amenity – Privacy and overlooking
- Other – devaluation of property

7.3. *Impact on residential amenity – Privacy and Overlooking*

7.3.1. The appellants in their appeal submission make clear that they do not object to the applicant's proposals for refurbishment, but they do raise concerns that the proposed development would severely affect their privacy and highlight their concerns that significant overlooking of the rear of their house, their property and garage, would result from the proposed extension and proposed patio area without any proposed screening. The appellant suggests that other alternatives could be considered to mitigate these impacts in terms of more permanent screening solution, instead of the proposed hedging which can be easily removed, along the shared boundary and a reduction in the amount of glazing in the proposed extension.

7.3.2. I acknowledge the submitted supporting photographs, rendered images and mark ups on the submitted figures to help illustrate the issues raised by the appellants. I note also the applicant's concerns relating to the veracity of the rendered images. For clarity the submitted supporting images by the appellant are valuable in providing additional contextual views, notwithstanding, my assessment is based on the submitted planning documentation including the scaled site sections and my site visit. Supplementary site sections D-D, E-E, F-F, G-G and H (Existing and Proposed) were submitted as unsolicited further information (date stamped 6 December 2023), in a response from the applicant to the third-party submission to illustrate the subject site in context with the appellants garage and dwelling. The Development Management Guidelines for Planning Authorities (2007) caution that as "...the

submission of unsolicited further information by the applicant may have implications for the rights of third parties, such submissions should only be considered when they relate to non-contentious matters, such as clarification of details already submitted”.

In this instance, I consider that the unsolicited further information does not depart from the application as originally lodged but rather illustrates the relationship between the proposed development and the existing buildings in the vicinity and as such I will include same in my assessment.

7.3.3. I acknowledge the appellants concerns regarding the extent of glazing proposed to the rear elevation of the existing cottage in comparison to the existing elevation. The topography of the subject site slopes down from the public road and as such the subject site sits approximately 2 metres higher than the appellant’s property. There is a change in level from the upper patio area proposed and the appellants garden of 1.5 metres. The difference in ground levels would, in my view, accentuate the height of the proposed extension when viewed from the appellants rear garden. I consider that the proposed lowering of the finished floor levels of the extension and the retention and proposed augmentation of the hedging to the rear boundary will minimise the potential for overlooking at ground floor level. On balance I do not consider the proposed extent of glazing at this ground floor level or the provision of patio areas within the garden to be unreasonable. It is proposed to retain a section of the side gable wall of the old store to form a new formal boundary with an extended new wall section to match will provide a permanent screening between the rear of the subject site and the appellants property. This boundary is proposed to be supplemented by new planting of Griselinia hedge to continue the existing southern hedgerow. I acknowledge the appellants concerns with respect to the permanency of planting but in this instance taking into account the existing scenario with the open aspect between both properties that the proposed provision of a new stone wall and planting would in my opinion improve the residential amenities of both parties.

7.3.4. In terms of impact on privacy and increase in overlooking I consider that the critical issue relates to the proposed first floor level. The proposed extension comprises two no. bedrooms, bathroom and an extended landing/study area at first floor with 2 no. windows to the rear elevation facing and within less than 6 metres of the shared property boundary with the appellant’s property. There is a significant amount of glazing proposed to the rear elevation at the upper floor level, however, 4.450mm of

the elevation comprises the glazing of the proposed vaulted roof extension and as such there will be no overlooking possible from this part of the proposed extension at first floor level. In addition, the separation distance between the rear wall of the proposed extension and the rear wall of the appellants property is approximately 29 metres. I consider that the distance between the existing property and the proposed extension is such that overlooking would, in my opinion, not adversely impact on the established residential amenities of property in the vicinity, including the appellants property. Furthermore, taking into account the proposed positioning of the windows, room design and the proposed use as primarily bedrooms on the first floor with a study I am of the opinion that overlooking from these spaces would not adversely impact on the established residential amenities of the adjoining property by reason of significant loss of privacy or increased overlooking.

7.4. Other – depreciate the value of property

- 7.4.1. The applicant has submitted a letter from an estate agent, Appendix E of the applicant's response to appeal document, which states that the overriding value of any property in this location is weighted heavily on views of Tralee Bay and the Slieve Mish mountain range on the south elevation. The estate agents conclude that the extension would not in their opinion cause any devaluation to any other dwellings in the immediate area.
- 7.4.2. In terms of planning considerations, the depreciation of value of property in the vicinity is interlinked with the issue of whether the proposed development would seriously injure the amenities of property in the vicinity. I have already set out my assessment the proposed development's impact on established residential amenity of the appellants property in the preceding section 7.3, and consider that the proposed renovation and extension of the existing cottage would not seriously injure the amenities of property in the vicinity by reason of a detrimental impact on privacy or adverse overlooking including onto the appellants property south of the subject site.
- 7.4.3. I am of the opinion, therefore, that the proposed development whilst the proposed development would result in a change in outlook for the appellant that the change is not so significant as to seriously injure the amenities of the property such to justify a

reason for refusal based on depreciation of value of the adjoining property to the south.

8.0 AA Screening

- 8.1. Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive)
- 8.2. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.
- 8.3. The subject site is not located within or adjacent to any European Site. The closest European Site, part of the Natura 2000 Network, is the designated Tralee Bay and Magharees Peninsula, West to Cloghane SAC, and Tralee Bay Complex SPA Site Code 004188 within approximately 35 m from the proposed development.
- 8.4. The proposed development is located within a rural residential cluster and comprises the renovation of an existing cottage and extension to same with alterations to elevations and all associated site works. The cottage is serviced by mains water supply, waste water public sewer and surface water public drain.
- 8.5. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.
- 8.6. The reason for this conclusion is as follows:
 - The screening determination of the planning authority
 - Small scale and domestic nature of the development
 - The location of the development in a serviced area and absence of ecological pathways to any European Site.
- 8.7. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

Having regard to the sensitive landscape designation and the policy objective KCDP 11-78 to protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area, the proposed renovation and restoration works, including part one and part two storey rear extensions, whilst strongly contemporary in form are sympathetic to the character of the existing structure in terms of the retention of the principal form and ridge height of the building to the road frontage. In addition, taking into account the separation distance, of approximately 29 metres, between the existing property and the proposed extension, the proposed positioning of windows, the proposed room design and the proposed use of the rooms at upper floor as principally bedrooms and study space that overlooking from these spaces would not adversely impact on the privacy and established residential amenities of the adjoining properties. As such, it is considered that, subject to compliance with conditions set out below, the proposed development would comprise the efficient use of existing housing stock and would not seriously injure the residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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 the 20 day of December 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the

development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The replacement roof covering to the existing A-pitch roof shall be slate or tile which shall be either black, dark grey or blue black. The colour of the ridge tile shall match the colour of the roof.
- (b) The use of white uPVC shall not be permitted on windows, doors, facias, soffits and guttering.
- (c) The stone of the old store building, proposed to be part demolished, shall be reused in the construction of the new wall proposed between the existing store and the existing concrete southern boundary to be supplemented, as necessary, with natural stone which shall be sourced locally.

Reason: In the interest of visual amenity and to help integrate the structure into the surrounding area.

3. (a) The landscaping scheme shown on drawing number 202317/21 and details contained in Arboricultural Assessment & Report, as submitted to the planning authority on the 20 day of December 2023 shall be carried out within the first planting season following substantial completion of external construction works.
- (b) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained, including the Cherry Blossom trees along the northern boundary, shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum radius of two metres from the trunk of the tree or centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- (c) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out

within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

(d) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity and to protect trees and planting during the construction period.

4. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of proper planning and sustainable development.

5. Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

6. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Claire McVeigh
Planning Inspector

18 October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	319128-24		
Proposed Development Summary	Renovation and refurbishment of existing dwelling, extension to rear, covered walkway to the front and all associated site works.		
Development Address	Kilfenora, Fenit, Tralee, Co. Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	✓	Development is not a class.	No EIAR or Preliminary Examination required
Yes			

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____