



An
Bord
Pleanála

Inspector's Report

ABP-319904-24

Development	Retention of agricultural storage shed, concrete fencing and access gates within the curtilage of a Protected Structure, Ballyheigue Castle.
Location	Castlelawn, Ballyheigue, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	24/60080
Applicant	Jeremiah O'Halloran
Type of Application	Retention Permission
Planning Authority Decision	Refuse to grant
Type of Appeal	First Party
Appellant	Jeremiah O'Halloran
Observer	Department of Housing, Local Government and Heritage
Date of Site Inspection	10 th April 2025
Inspector	Gary Farrelly

1.0 Site Location and Description

The subject site has a stated area of 0.29 hectares and is located within the townland of Castlilawn, within the town of Ballyheigue, County Kerry. The site is located within the walled gardens to the east of Ballyheigue Castle, which is designated as a Protected Structure under the Kerry County Development Plan 2022-2028. The walled gardens are defined by high rubble limestone and partial red brick garden walls.

2.0 Development to be Retained

Retention permission is sought to retain an agricultural storage shed, concrete fencing and access gates. The works to be retained are located within the curtilage of the protected structure, Ballyheigue Castle. The agricultural storage shed has a floor area of 129.9sqm and is built to a ridge height of 6.05 metres. It comprises of 2 no. roller shutter doors and is externally finished in dark green metal sheeting. The concrete post and panel fence measures 1.8 metres in height and extends for approximately 100 metres in length along the east of the existing accessway. The 2 no. access gates to be retained measure 2.7 metres in height. It is stated that they have been located where the walls had pre-existing openings. They comprise of a metal frame with a timber infill panel gate.

3.0 Planning Authority Decision

3.1. Decision

The planning authority (PA) decided to refuse to grant permission, by Order dated 17th of May 2024, for the following reasons:

- 1. The development proposed to be retained is located within the garden complex of Ballyheigue Castle on land zoned G3 – Conservation in the Ballyheigue Local Area Plan, part of the Listowel Municipal District Local Area Plan 2020-2026. It is considered that the proposed development would seriously injure the character and setting of Ballyheigue Castle, a designated Protected Structure and the Ballyheigue Castle Walls. The proposed development would, therefore, contravene Objectives BE-GO-04 and BE-GO-07 of the Listowel Municipal*

District Local Area Plan 2020-2026 and Objectives KCDP 8-40 and KCDP 8-50 of the Kerry County Development Plan 2022-2028. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

Planning Report

The area planner (AP) report on file assessed the development in terms of, inter alia, its principle and visual impact. It was considered that the development was not in keeping with the built heritage of the walled gardens on the site and the shed contravened the 'G3 – Conservation' zoning of the site. The agricultural shed was considered insensitive to the immediate characteristics of the walled gardens and was visually dominant. The concrete panels were considered visually obtrusive and out of character with the site context. The AP recommended a refusal of permission which was endorsed by the Senior Executive Engineer.

Other Technical Reports

Conservation Officer (CO) (*report dated 03/05/2024*) – The CO report stated that a grant of retention permission would seriously affect the character and setting of the castle and its garden walls. The CO noted that estate walls, particularly in proximity to the country house, are rare in Kerry. The walls are more intact and cohesive which elevates the importance and cultural significance of these walled gardens. The CO concluded that the insertion of concrete fencing into a landscape defined by historic brick and rubble stone walls, as well as the construction of an agricultural shed within the walled garden, negatively impacts the protected structure. A refusal of permission was recommended.

County Archaeologist (*report dated 20/02/2024*) – This report considered that there was sufficient distance between the development and the recorded monuments and no mitigation was required.

Environmental Assessment Unit (*report dated 22/02/2024*) – This section screened the development for Appropriate Assessment and concluded that there was no realistic pathway for impact or possibility that the proposal could have significantly affected a European site. It was considered that AA was not required. In terms of

Environmental Impact Assessment (EIA), it was considered that EIA or EIA screening would not have been required for the development due to the nature, scale and location of the works.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Relevant Planning History

PA ref. 20/1034 (*Site of agricultural shed to be retained*)

On 18/12/2020 the PA refused permission for the construction of a dwelling within the garden walls of Ballyheigue Castle (in same location of the subject agricultural shed). The reasons for refusal were due to the house contravening the 'G3 – Conservation' zoning of the land and to it negatively impacting the protected structure.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

The subject site is located within the walled gardens of a designated protected structure 'RPS-KY-0121 / RPS-KY-0122 – Former Country House'.

Section 8.4 Built Architectural Heritage

It is an objective of the Council to:

KCDP 8-40 Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting including designed landscape features and views, is compatible with the special character of that structure.

KCDP 8-42 Prohibit demolition or inappropriate alterations and replacement of elements of protected structures where they would adversely affect the essential character of a protected structure.

KCDP 8-50 Require that proposals for development within historic designed landscapes be sensitive to and respect the built heritage elements and green space values of the site.

5.2. Listowel Municipal District Local Area Plan 2020-2026

Section 3.4 Ballyheigue

The subject site is designated as 'G3 – Conservation' under the land use plan. Section 2.7 of the Local Area Plan outlines that this zoning relates to open space, sports and amenity and to its conservation, amenity or buffer space, corridor/belt, landscape protection.

The boundary stone walls/fences are designated for preservation under the landuse plan.

Built Environment and Heritage

There is one National Monument within the town, Ballyheigue Castle. There are two Protected Structures within the plan area- namely Ballyheigue Castle and Ballyheigue Castle Gateway. It is not proposed to include any additional structures on the Record of Protected Structures. It is considered however, that those elements of the built environment which define the character of the village need to be enhanced and preserved. It is necessary to ensure that the local character and sense of place are enhanced. It is important therefore that new development reflects the traditional elements of the existing streetscape.

General Objectives

BE-GO-04 Protect buildings and streetscapes which form part of the town's historic, cultural, and architectural heritage and to encourage the appropriate reuse and sensitive restoration of unused/derelict vernacular properties in the town.

BE-GO-07 Preserve, protect and enhance existing stone walls.

5.3. National Guidelines

- Architectural Heritage Protection Guidelines for Planning Authorities (2011)
 - Section 13.1 Determining the Curtilage of a Protected Structure

- Section 13.4 Features within the Curtilage of a Protected Structure or its Attendance Grounds – Gardens
- Section 13.5 Development within the curtilage of a Protected Structure
- Section 13.7 Development within the Attendant Grounds

5.4. National Inventory of Architectural Heritage (NIAH)

Reg No.	21301401 ¹
Rating	Regional
Categories of Special Interest	Architectural, Historical, Social
Description	
<p>Remains of detached two- and three-storey Tudor Gothic Revival style country house, built 1809, incorporating fabric of earlier house, 1758. Comprising six-bay two-storey side (south) elevation of entrance block with battlemented parapet, single-bay three-storey battlemented corner turrets on circular plans and nine-bay two-storey lower wing (originally return) to west having battlemented parapet and corner machicolation. Burnt, in 1840, later used as prison, burnt, in 1921 and now mostly collapsed. Wing reconstructed and remodelled, c. 1975, to accommodate use as apartments with remainder of building now ruinous. Castellated parapets with one cast-iron hopper having floral motif. Snecked sandstone walls with grey limestone string courses and plinth, castellated machicolations, blind arrow loops and having render to parts of side wall with imitation ashlar. Square-headed openings with limestone sills, surrounds, hood mouldings and having sandstone relieving arches. Timber window frames in side openings. Four-centred arch to doorway in double-height arch having window above with carved spandrels. Detached nine-bay two-storey Tudor Gothic Revival style former stable complex, built c. 1810, to east on an L-shaped plan about a courtyard with battlemented parapet, with single-bay two-storey corner turret on a circular plan and three-bay side elevations. Extensively renovated in latter part of twentieth century with pair of single-bay single-storey gabled projecting porches added to accommodate use as apartments. Detached six-bay single-storey rubble stone-built outbuilding, built c. 1810, to east on an L-shaped plan with series of elliptical-headed integral carriage arches, now disused. Section of rubble stone boundary wall to east with series of arrow loops possibly originally part of walled garden.</p>	

Ballyheigue Castle is also included within the NIAH Garden Survey (Garden No. 2063)².

¹ <https://www.buildingsofireland.ie/buildings-search/building/21301401/ballyheige-castle-ballyheige-ballyheige-kerry>

² <https://www.buildingsofireland.ie/buildings-search/site/2063/ballyheige-castle-ballyheige-co-kerry>

5.5. Natural Heritage Designations

The subject site is not located within any designated natural heritage site. The nearest designated sites are Tralee Bay Complex Special Protection Area (SPA) (Site Code 004188) and Akeragh, Banna and Barrow Harbour Special Area of Conservation (SAC) (Site Code 000332) which are located approximately 1.1km south of the subject site. This is also designated as a proposed Natural Heritage Area (pNHA). Kerry Head SPA (Site Code 004189) is located approximately 1.7km west of the subject site.

5.6. Environmental Impact Assessment (EIA) Screening

The development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment. I refer the Board to Appendix 1 in this regard.

6.0 The Appeal

6.1. Grounds of Appeal

A first-party appeal from Jeremiah O'Halloran was lodged to the Board on 11th June 2024. The grounds of appeal are summarised as follows:

- The agricultural shed is situated 100 metres away from the castle and set back 60 metres from the eastern public road. It was erected to allow storage of equipment, produce, feed and fodder for animals and crops.
- It is considered that the shed does not impact the protected buildings and streetscapes which form part of the town's historic, cultural and architectural heritage and does not qualify as inappropriate use of farmland or an incentive structure on same.
- It is considered that the shed does not affect or constitute development, modification or alteration or extension to the protected structure which is Ballyheigue Castle, situated 100 metres away or impact its setting including features or views.

- It is considered that the shed is sensitive to and respects the built heritage elements and green space values of the site.
- There has been no demolition or interference with the historic walls to facilitate installation of the gates. It is considered that the gates are an appropriate and sensitive intervention providing secure access to the farmland at an existing gap within the stonewalls and were constructed carefully so as not to interfere with or damage the stonewalls. They do not constitute an adverse modification, alteration or extension to the existing stonewalls and does not impact the landscape features or views.
- The concrete panel fence is 1.8 metres high and is concealed behind the significantly higher existing stone walls and its use offers secure access and protection to the access passageway to the shed. It is considered that the fence is an appropriate intervention, does not impact the protected buildings or streetscapes and does not interfere or damage the existing stonewalls.
- The development to be retained is of modest scale and demonstrates a low impact on the landholding within the curtilage of Ballyheigue Castle.

6.2. Planning Authority Response

The PA did not issue a response to the grounds of appeal.

6.3. Observations

The appeal documentation was circulated to the Department of Housing, Local Government and Heritage, the Heritage Council, An Taisce, An Chomhairle Ealaíon and Fáilte Ireland. A submission from the Department of Housing, Local Government and Heritage was received by the Board on 27th August 2024 which is summarised as follows:

- The development for which retention is sought is located within the curtilage of Ballyheigue Castle, which is included in the Record of Protected Structures in the Kerry County Development Plan 2022-2028. The relevant objectives within the Plan are KCDP 8-40 and KCDP 8-50.

- The Listowel Municipal District Local Area Plan 2020-2026 states that it is an objective of the council to BE-GO-04: protect buildings which form part of the Ballyheigue's architectural heritage, and BE-GO-07: preserve, protect and enhance existing stone walls. The site is designated G3 Conservation under the LAP.
- The department concurs with the assessment and conclusion of the planning authority and recommends that its decision to refuse permission is upheld.

7.0 Assessment

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

- Zoning
- Built Heritage

Zoning

- 7.2. The subject site is zoned 'G3-Conservation' within the Listowel Municipal District Local Area Plan 2020-2026 (LAP). The zoning matrix within this LAP and within Volume 6 (Appendix 2) of the Kerry County Development Plan 2022-2028 (CDP) does not specifically prohibit agricultural sheds within lands zoned 'G3-Conservation'. However, the stated objective of the zoning is to protect and enhance high amenity areas from inappropriate development.
- 7.3. Section 1.3.7 (Volume 6, Appendix 2) of the CDP states that proposed land uses not listed will be considered on a case by case basis having regard to, inter alia, the proper planning and sustainable development of the area and compliance with the relevant policies and objectives, standards and requirements of the CDP and Section 28 Guidelines. Having regard to this, I will now proceed to assess the development against these provisions.

Built Heritage

- 7.4. The PA's reason for refusal related to concerns that the development to be retained would seriously injure the character and setting of Ballyheigue Castle due to its location within the garden complex of the protected structure. The decision was largely informed by a detailed report of the Conservation Officer (CO) who recommended refusal. I also acknowledge the appeal submission from the Department of Housing, Local Government and Heritage which supports the decision of the PA.
- 7.5. Having reviewed the First Edition (1829-41) and 25 Inch (1897-1913) Ordnance Survey Maps, I am in agreement with the PA's CO that the walled gardens and subject site historically formed an integral part of the castle and its setting. Therefore, in accordance with paragraph 13.4.21 of the Architectural Heritage Guidelines for Planning Authorities (2011), I consider that careful consideration is required to ensure that development in such an area that is an integral part of the setting of the castle does not adversely affect the character of the protected structure or its curtilage.
- 7.6. The Board should note that there are three elements to this retention development which I will assess separately below under sections (a), (b) and (c).

(a) Agricultural Storage Shed

- 7.7. With regards to this element of the development to be retained, I note that the applicant has stated in the grounds of appeal that the shed does not impact on the protected structure due to its location 100 metres away from the castle. However, as outlined above I consider the walled gardens an integral part of the castle and its setting.
- 7.8. I note that the shed has been sited within the walled gardens approximately 1.2 metres from the historic stone wall. The Board should note that Objective BE-GO-07 of the LAP seeks to preserve, protect and enhance existing stonewalls and the preservation of such walls are illustrated within the Ballyheigue zoning map.
- 7.9. Having inspected the site, I consider that this structure has adversely affected the setting of the protected structure due to its siting within the walled garden and due to its scale, height and design, which includes the use of metal cladding, which I do not consider to be sympathetic to such a sensitive setting. Therefore, it is my view that this element of the development to be retained is not compatible with the special architectural and historical character of the protected structure (as defined by the NIAH

survey) and is not sensitive to or respects the built heritage elements and green space values of the site. I consider the development to be contrary to objectives KCDP 8-40, KCDP 8-42 and KCDP 8-50 of the CDP, objectives BE-GO-04 and BE-GO-07 of the LAP and the general principles of the 2011 Architectural Heritage Guidelines for Planning Authorities with regards to the curtilage of protected structures and gardens.

(b) Concrete Post and Panel Fencing

7.10. The second element of the development to be retained relates to the construction of a concrete post and panel fence along the western boundary of the site for a total length of c. 100 metres. I note that the applicant has stated in the grounds of appeal that due to the concealment of this wall behind the higher stone wall it does not impact the protected buildings or streetscapes and does not interfere or damage the existing stonewalls.

7.11. However, it is my view that the construction of the concrete wall within such a historic garden which is defined by historic brick and rubble stone walls and to its proximity to the existing stone wall has resulted in a detrimental impact on the character of the stonewall by interrupting the relationship between the historic gardens and wall. It is my view that it represents an inappropriate intervention that is contrary to objectives KCDP 8-40, KCDP 8-42 and KCDP 8-50 of the CDP, objectives BE-GO-04 and BE-GO-07 of the LAP and the general principles of the 2011 Architectural Heritage Guidelines for Planning Authorities with regards to the curtilage of protected structures and gardens.

(c) Access Gates

7.12. The final element of the development to be retained relates to 2 no. access gates which the applicant has stated were placed in existing gaps within the stonewalls in which there has been no demolition or interference with the walls to facilitate their installation. It appears that the CO did not specifically reference the access gates within their report, however, the Area Planner considered such sliding electric gates to not be in keeping with the building heritage of the walled gardens.

7.13. I note that the submitted retention report outlined that these were previously two gaps in the wall (overgrown). From the applicant's submitted documents, it appears that they were previously damaged and thus were never used as access points to the walled gardens.

7.14. Having reviewed the submitted photographs, having regard to the materials used, and having inspected the site, it is my view that these access gates are not compatible with the historic brick and rubble stone walls and represent an inappropriate alteration to the walled garden. Therefore, I consider this element of the development to be contrary to objectives KCDP 8-40, KCDP 8-42 and KCDP 8-50 of the CDP, objectives BE-GO-04 and BE-GO-07 of the LAP and the general principles of the 2011 Architectural Heritage Guidelines for Planning Authorities with regards to the curtilage of protected structures and gardens.

Overall Conclusion

7.15. Having regard to my assessment above, it is my view that the overall development to be retained materially and adversely affects the character and setting of the protected structure, Ballyheigue Castle, and therefore, would seriously injure the visual amenities and architectural and historical interest of the area. Therefore, I recommend that the decision of the PA is upheld and permission is refused.

8.0 Appropriate Assessment (AA) Screening

8.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 1.1km from Tralee Bay Complex SPA (Site Code 004188) and Akeragh, Banna and Barrow Harbour SAC (Site Code 000332) and approximately 1.7km from Kerry Head SPA (Site Code 004189). The proposal comprises the retention of an agricultural storage shed, fencing and access gates. No nature conservation concerns were raised by the PA as part of the application or observations in the planning appeal.

8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site. The reason for this conclusion is as follows:

- To the location of the development within a built-up urban area and to the built-up nature of the surrounding area.
- To the distance from the nearest European sites regarding any other potential ecological pathways and intervening lands.

- Taking into account the screening determination by the Environmental Assessment Unit of the PA.

8.3. I conclude, on the basis of objective information, that the development to be retained would not have likely resulted in a significant effect on any European site, either alone or in-combination with other plans or projects. Likely significant effects are excluded and, therefore, AA under Section 177V of the Planning and Development Act 2000, as amended, is not required.

9.0 Recommendation

I recommend to the Board that permission is **Refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the location of the development to be retained within the walled gardens and curtilage of the Protected Structure, Ballyheigue Castle, which is designated within the Record of Protected Structures in the Kerry County Development Plan 2022-2028 (refs. RPS-KY-0121 and RPS-KY-0122), to the 'G3 -Conservation' zoning of the site and to the stone walls of the site being designated for preservation under the landuse zoning map of the Listowel Municipal District Local Area Plan 2020-2026, to the proximity of the development to the historic stonewalls of the Protected Structure and to the nature, scale and design of the development, it is considered that the development to be retained would result in a detrimental effect on the character and setting of the Protected Structure and would seriously injure the visual amenities and architectural and historical interest of the area. The development to be retained would be contrary to objectives KCDP 8-40, KCDP 8-42 (Record of Protected Structures) and KCDP 8-50 (Historic Landscapes) of the Kerry County Development Plan 2022-2028 and objectives BE-GO-04 and BE-GO-07 of the Listowel Municipal District Local Area Plan 2020-2026, which all seek to preserve and protect buildings, stonewalls and historic designed landscapes. Furthermore, the development would be contrary to the principles set out in the 2011 Architectural Heritage Guidelines for Planning Authorities in relation to the

curtilage of protected structures and gardens. It is, therefore, considered that the development to be retained would be contrary to the proper planning and sustainable development of the area.

Declaration

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.

Gary Farrelly

Planning Inspector

13th May 2025

Appendix 1: EIA Pre-Screening

An Bord Pleanála Case Reference		ABP-319904-24	
Proposed Development Summary		Retention of agricultural storage shed, fencing and gates	
Development Address		Castlelawn, Ballyheigue, County 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 X Proceed to Q2.
			No No further action required
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	X		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No		Pre-screening determination conclusion remains as above (Q1 to Q4)	
Yes		Screening Determination required	