



An
Bord
Pleanála

Inspector's Report

ABP-320775-24

Development	Demolition of extension, construction of new extension and associated site works.
Location	Ardaturrish More, Glengarriff, Bantry, Co. Cork
Planning Authority	West Cork County Council
Planning Authority Reg. Ref.	24338
Applicant(s)	Maura Linehan
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party
Appellant(s)	Maura Linehan
Observer(s)	None
Date of Site Inspection	13 th February 2025
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located off the N71 about 4km south of Glengarriff town and approx. 12km north of Bantry. It is in the townland. The N71 has been realigned in the vicinity of the site such that the former N71 has been blocked off at its western end and a short cul-de-sac of 100m provides access to existing dwellings south of the subject site. This cul-de-sac extends approximately 70m along the frontage of the site. It is overgrown. At the eastern end there is an extensive splayed junction with the N71 with good sightlines.
- 1.2. The site has a stated area of .5 hectares and is occupied by a boarded up dwelling that is unoccupied and there is no obvious vehicular access.
- 1.3. There is an unoccupied dwelling to the south west of the site which is accessed via track bounding the site.

2.0 Proposed Development

- 2.1. It is proposed to demolish a 25 sq.m. extension of an 81sq.m dwelling and to refurbish it and extend it by 92 sq.m. in a grouped building format. A wastewater treatment system together with associated site works are proposed.

3.0 Planning Authority Decision

3.1. Decision

By order dated 15th August 2024 the planning authority decided to grant permission subject to 29 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report estimates that the house was occupied up to around 50 years ago and that it is in a state of repair although walls and roof are substantially intact. The case is accepted in principle and treated as a domestic extension having regard to the development plan provisions for ruinous or derelict structures and the

condition of the building. RP 5-30 is relevant in context of approach to re-use and design. GI 14-19 is relevant in context of scenic amenities and impact on landscape. Other policies are also cited in respect of views and scenic routes noting the sites location in a High Value Landscape and along a scenic route.

3.2.2. Other Technical Reports

Area engineer:

- No significant traffic issues. 'For the purposes of this planning application this development should be treated as an extension to an existing dwelling. Therefore, it is assumed that there shall be no additional traffic onto the N71 national Route. It is obvious that the local road L-97108-0 at its western side is not in frequent use. The applicant will be subject to the special department levy of €5000 towards the cost of rehabilitating the local road and permanently sealing the western junction with the N 71.'
- Sewage proposal: acceptable
- Bored well noted
- Overall, no objection to grant subject to conditions

Environment Report:

- No objection subject to conditions

3.2.3. Conditions

- The proposal is treated as an extension and as the net increase in floor area is small and would only give rise to a contribution of less than €200, no general contribution is attached.
- Condition 29 seeks a special contribution for road infrastructure and improvement as recommended by the area engineer.

3.3. Prescribed Bodies

TII: letter dated 9th July 2024: General letter alerting to the planning authority to official policy and publications for developments impacting national roads.

3.4. **Third Party Observations**

None

4.0 **Planning History**

None relevant to the site.

5.0 **Policy and Legislative Context**

5.1. **Cork County Development Plan 2022-2028**

5.1.1. Section 5.12 sets out policy and objectives for renovation or replacement of an uninhabitable or ruinous dwellings. Objective RP5 -30 applies. Encourages proposals in this regard subject to specific criteria.

5.1.2. The site is in a High Value Landscape. Objective GI- 14 seeks to protect the landscape through sensitive siting and design and landscaping.

The site is located along a designated scenic route and objectives GI 14 -12, 13 and 14 apply to development in such locations.

5.2. **Special Development Contributions provisions**

5.2.1. **The Planning and Development Act 2000 as amended**

- Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution
- Section 48 (12) sets out provisions for the payment of a special contribution together with provisions for refund in part or in whole, having regard to extent of works, if any, completed.
- Section 48 (13) sets the scope of an appeal against a special contribution –
‘where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under *section 37* of the decision of the planning authority under that section, the Board shall not determine the

relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.'

5.2.2. Development Management Guidelines for Planning Authorities, 2007, provide guidance on the use of section 48(2)(c) provision and appeals. (section 7.12)

'special' contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

5.2.3. Development Contributions Guidelines for Planning Authorities 2013

A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only

developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution (pages 5).

5.2.4. Natural Heritage Designations

The nearest site is the Glengarrif Harbour and Woodland SAC Site Code 000090 at distance of 1.9km tot the northwest of the development site.

6.0 EIA Screening

Having regard to the nature of the appeal, the local planning authority is the competent authority for screening the proposed development. In this case no EIAR was sought.

7.0 The Appeal

7.1. Grounds of Appeal

The appeal is against the special contribution only and is understood therefore not relate to the planning merits in accordance with the cited provisions of the Act. The background to the case reiterates the area engineer's report in respect of road condition. The points made disputing the condition are, in summary:

- The road is a cul-de-sac now and will clearly only be used by the applicant. The applicant would have been agreeable to carrying out works as specified but was not given the opportunity.
- The applicant owns to the centre of the road and states its condition to be reasonable but overgrown particularly in the northeastern side.
- The applicant approached the council to purchase the road in the belief that the council would have little interest in maintaining the road but the sale while agreed in principle has been protracted since 2020.
- Ambiguous nature of proposed works makes it difficult to accurately determine if works have been carried out.

- As a straightforward domestic extension for which general contributions have been waived it is difficult to understand how the development is of a nature to incur specific exceptional costs.
- Having regard to the proposed purchase of the road, the provision for general development contributions and the willingness to contribute to its repair, the special contribution is tantamount to double charging contrary to the guidelines.
- Maps showing the extinguishment of a Public Right of Way and the parcel of land relating to the road area attached.

7.2. Planning Authority Response

- No response received.

8.0 Assessment

8.1. Scope of Issues

- 8.1.1. As the appeal is solely against Condition 29 of the planning permission, which relates to a Special Financial Contribution, Section 48(13)(a) of the Planning and Development Act 2000, as amended, applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.
- 8.1.2. Condition 29 requires the payment of a special contribution of €5,000 “in respect of specific exceptional costs not covered in the Council’s General Development Contribution Scheme, in respect of works proposed to be carried out for the provision of surface repair, drainage and drain clearance and treatment required to the western junction with the N71.” The questions arising in determining if this is reasonable relate to:
 - The need for development
 - The need for the local authority to carry out the works
 - Is the amount justified
 - Is it double counting

8.2. The need for the development

- 8.2.1. In this case the proposal is to reinstate an uninhabited and uninhabitable dwelling house. This is accepted by the planning authority in principle having regard to the development plan provisions for ruinous and derelict structures. The house appears to have been uninhabited for at least 50 years and in the curtilage proposed there is no evident vehicular entrance – the creation of which is part of the proposed associated site works. In the intervening years since its established uninhabited state the Council has by-passed the dwelling frontage along with other properties to the south, with the realignment of the N71. As part of these works, the western end of what is named as the L-97108-0, has been blocked up and the remaining road is overgrown but still in its charge.
- 8.2.2. The introduction of what I consider to be a new vehicular access will result in use by the applicant of the L-97108-0, a road no longer part of the N71. Accordingly, by virtue of the road layout, the section of L97108 fronting the site will be for the exclusive use of the proposed habitable dwelling, notwithstanding its accessibility by the public.
- 8.2.3. Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution and guidance on the application of this provision is provided in the Development Management Guidelines, 2007 (Section 7.12). The legislation and the guidance are quite clear that such a requirement should only be made in respect of a particular development whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme. It is further clear that such a condition must be amenable to implementation under the terms of S 48(12) of the Act. The Area Engineer's report (15/8/24) refers to the lack of use of the road and states that the works required include rehabilitating the local road and permanently sealing the western junction with the N 71. I note the by-passed section of road extends approximately 70 along the site frontage and approximately 10m of this is associated with the western junction which would have formed part of the N71 road works. Accordingly, I consider 60m of the road is specific to the application and costs incurred with its maintenance and repair would be exceptional.

8.3. The need for the local authority to carry out works

- 8.3.1. The appellant explains how her land ownership extends to the middle of the road and notes the condition of the road as being overgrown particularly on the opposite side to her land and would have been agreeable to carrying out specified works. Furthermore, it is explained how she has been involved in an attempt to purchase the land associated with the road, as mapped, but that this has been protracted.
- 8.3.2. As the road fronting the site is still in the charge of the council it is still within its responsibility to carry out works. While it may be an option to devolve this function to the applicant whether as a consequence of a sale (and extinguishment of right of way) or by agreement, the situation remains that works remain the responsibility of the local authority.

8.3.3. Is the amount justified?

- 8.3.4. The Guidelines also state that it should be clear from the decision how the contribution was calculated and apportioned to the particular development. The nature/scope of the works and the expenditure involved should be specified. In this case the wording of condition 29 specifically states provision of surface repair, drainage, drain clearance and treatment required at the western junction with the N71 which elaborates on the Area Engineer's report referring to road rehabilitation and sealing of junction. I consider the intention of the condition is clear from the planning and technical reports and that the proposed upgrade works are specific exceptional costs that would be incurred by the planning authority arising from the proposed development and which are not covered by the General Development Contribution Scheme. The planning authority has not attached a condition to the permission requiring payment of a financial contribution in respect of public infrastructure and facilities benefitting development in the area under the adopted Cork County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. This is due to treating the application as a modest domestic extension whereby the net amount payable would be less than €200. Accordingly, the Council has waived the general contribution scheme and therefore has no other source of finance to service infrastructure directly beneficial to the proposed development.

- 8.3.5. The Area Engineer's report gives a total figure of €5000 as an amount to go towards works and simply itemises the general categories of works required.
- 8.3.6. it is clear that works are necessary to facilitate a safe access to house. I do however consider that approximately 10m of former road associated with the blocking up work should be discounted. As I have stated, a section of this work relates to the N71 and would I consider be covered by funding for the national route Accordingly, there is a case to reduce the amount at least on a pro rata basis to €4,286. Should the Board decide to attach and/or modify the condition, I consider that the wording should be amended to exclude the junction work. I also consider the provision of a more robust closure and segregation at the junction is possibly needed so as to ensure no light spill and distraction to road users on the N71 but this cost should be borne by the Council. While it would be helpful to have a unit rate for the elements of work together with the linear metres and ground areas of work proposed in order to measure the extent of costs incurred at various stages, I consider the amount to be reasonable at an average rate of €71.14 per linear metre of road and having regard to the road condition. The provisions of the Act provide for a refund should this work not be completed in part, or, in full.

8.4. Double counting

- 8.4.1. As no general development contribution has been sought and with the offsetting of the N71 work at the cul-de-sac end I do not consider the special contribution sought to amount to double counting.

9.0 AA Screening

- 9.1. As the matters for consideration in this case are confined to those arising in condition 29 pertaining to a special contribution, the need for screening by the Board does not arise. The local planning authority is therefore the competent authority for the purposes of AA screening. In its report I note no ecological impacts have been determined to arise.

10.0 Recommendation

I recommend that, in accordance with section 48 of the Planning and Development Act, 2000, as amended, based on the reasons and considerations under, the Board directs the said Council, under section 48 (13) of the 2000 Act, to **Modify** condition number 29 to €4,286 and the wording and reason therefore.

11.0 Reasons and Considerations

Having regard to the nature of the proposed development which includes a new vehicular entrance and having regard to the character and condition of the road serving the site and its substantially exclusive use by virtue of the proposed development and the realignment works along the N71 in the area, it is considered reasonable and appropriate for the planning authority to impose a special development contribution with respect to rehabilitating and making safe the section of road fronting the site while it remains in charge of the county council. It is considered that the relevant scope of works on the road fronting the site (an approximate 60 metre length of a 70 metre length of road) and the €5000 base rate indicated by the planning authority is also reasonable based on the extent of road and nature of work likely to be involved in making it safe. The condition is, therefore, considered acceptable in terms of the proper planning and sustainable development of the area.

Condition 29

The developer shall pay a financial contribution of € 4,286 (four thousand, two hundred and eighty-six euro) to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of specific exceptional costs not covered by the Council's General Contributions Scheme in respect of works to be carried out for the surface repair, drainage and drain clearance required to treat the section of the road (L-97108-0) fronting the development site which benefits the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject

to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

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.

Suzanne Kehely

Senior Planning Inspector

28th May 2025