



An
Bord
Pleanála

Inspector's Report

ABP-321746-25

Development	Permission to repair, refurbish and add extension to existing house.
Location	Glencuttane Lower, Kilgobnet, Beaufort, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2460402
Applicant(s)	James Sheehan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	James Sheehan
Observer(s)	none
Date of Site Inspection	10 th April 2025
Inspector	Aisling MacNamara

1.0 Site Location and Description

- 1.1. Site of an existing rural house (former Council cottage) within the rural area of Glencuttane Lower, to the south of Killorglin in County Kerry. The house is in derelict condition (block walls in place, no roof) having burnt down a number of years ago. The site is accessed via a private cul de sac road from the L4010 local road. The Cotters River is located c. 150m to the west. Agricultural lands adjoin to the boundaries. There are farmyard buildings located to the southeast of the site.

2.0 Proposed Development

- 2.1. Permission is sought to repair, refurbish and add an extension to the existing house. The area of the site is 0.101ha. The floor area of existing buildings is 82.75sqm and the floor area of proposed works is 33.50sqm

3.0 Planning Authority Decision

3.1. Decision

By order dated 19th December 2024, the planning authority made the decision to grant permission subject to 9 conditions. The following conditions are of relevance:

2.(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the initial occupant and shall remain so occupied for a period of seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the initial occupant. The initial occupant shall enter into a written agreement with the planning authority under Section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the initial occupant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

(c) This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and in the interest of the proper planning and sustainable development of the area.

3.(a) The use of the dwelling once renovated shall be as a primary permanent all year round private residence.

(b) The dwelling on site shall not be used as holiday home or second home.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Case Planner – first report includes recommendation for further information (dated 12/08/2024).
- Further information was requested by the planning authority dated 13/08/2024 in relation to 3 matters relating to waste water treatment and disposal, surface water disposal and the vehicular entrance.
- The further information received on 21/11/2024 was deemed significant by the planning authority and revised public notices were submitted.
- Second report of the Case Planner recommends grant of permission (18/012/2024) – reflect decision of planning authority.

3.2.2. Other Technical Reports

- Environment: no objection subject to conditions relating to wastewater treatment and disposal (17/12/2024).
- Environmental Assessment Unit: report dated 15/07/2024 - no issues with the proposal subject to wastewater being satisfactory and condition relating to

external lighting; report dated 29/07/2024 – has discussed with NPWS, has visited site and can confirm that the building has low bat roost potential, there is no requirement for further bat roost appraisal/ scoping; report dated 30/07/2024 – recommends condition in relation to external lighting.

3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage – report dated 29/07/2024 recommends bat roost survey be undertaken.

3.4. Third Party Observations

None

4.0 Planning History

C1725 – permission granted 14th November 1980 for a Council cottage.

5.0 Policy Context

5.1. Development Plan

The Kerry County Development Plan (CDP) 2022-2028 is in place.

Chapter 5 Rural Housing

5.1 Introduction

This chapter sets out the policies required for the continued sustainable development of rural County Kerry, in a manner that is consistent with the guidance, strategies and policies at National and Regional level and are based on the following important principles:

1. The specific land use requirements of agricultural activity will be accommodated as a first priority.
2. A focus on supporting vibrant rural communities centred on a network of rural village settlements is a cross cutting theme of this Plan.

3. Rural Kerry is an important national and international tourism and heritage asset, and its environmental and socio-cultural assets will be protected.
4. Encouragement and support for restoration and refurbishment of the existing built fabric in rural areas.
5. The requirement to transition to a low carbon and climate resilient society, necessitates consideration of the spatial pattern of development focusing on elimination of unnecessary trips, more efficient use of resources and opportunities to provide centralised and communal public services

5.5 Rural Housing

- Appendix 8 Rural Area Types - Site located in a rural area under urban influence
- KCDP 5-15 In Rural Areas under Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need.

Categories a) to e) set out.

Preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house

5.5.2.1 Occupancy Condition and Section 47 Agreements

Occupancy Condition: All permission granted for rural housing shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his/her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy.

Section 47 Agreements: In areas where significant levels of rural housing development have taken place on the edges of urban areas within the county and where the Council considers such areas are becoming over developed the council may seek agreement under Section 47 of the Planning Act if it considers it necessary to regulate development in the area.

- KCDP 5-19 Ensure that the provision of rural housing will not affect the landscape, natural and built heritage, economic assets, and the environment of the county.
- KCDP 5-20 Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence and subject to the inclusion of an Occupancy Clause for a period of 7 years.

5.6 Holiday / Second Homes

- KCDP 5-23 Ensure that holiday / second homes shall be located in established settlements in towns or villages and not in the rural landscape

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

- KCDP 5-26 Promote the viable re-use of vernacular dwellings and buildings without losing their character and to support applications for the sensitive restoration of disused vernacular or traditional dwellings as permanent places of residence.
- KCDP 5-27 Facilitate the sensitive restoration and conversion to residential use of disused vernacular or traditional buildings as permanent places of residence.
- 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

Chapter 10 Tourism and Outdoor Recreation

- KCDP 10-30 Encourage the sensitive redevelopment and / or return to suitable use, of derelict, vacant or redundant buildings, in appropriate locations in order to provide for visitor accommodation and tourism development. As part of this, potential for impact on wildlife should be taken into account as outlined in S 4.3.4 of this plan
- KCDP 10-34 Consider the change of use of derelict/vacant buildings to short-term letting where such buildings are not suitable for long-term residential

accommodation and will not have a negative impact on the long-term rental market or the residential amenity of the area.

Appendix 7 Landscape Review - Map 25. Killorglin and Beaufort - Overall landscape sensitivity – Visually Sensitive Area

Building a House in Rural Kerry – Design Guidelines, Kerry County Council, 2009

5.2. Natural Heritage Designations

The site is located c 23m from Castlemaine Harbour Special Area of Conservation.

5.3. EIA Screening

The proposed 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 screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

The main issues raised in the grounds of appeal are summarised as follows:

- The development relates to the house which was burned down on 9th August 2019 with the loss of the applicant's brother.
- The proposal is for the repair and renewal of a fire damaged house with the intention to offer it for sale on the open market or to operate it as a holiday home.
- Conditions 2 and 3 attach restrictions that are not acceptable and request that the Board remove these conditions.
- Regard is paid to the rural housing policy of the CDP including section 5.1, 5.5 and 5.7. Existing and derelict property permissions do not generally attract the occupational restrictions.

- Regard is paid to tourism and recreation policies of the CDP including KCDP10-30 and KCDP10-34. The policy allows for visitor accommodation in tourist areas and existing vacant / derelict building can fulfil this need. There is a need for tourist accommodation in this part of Kerry.
- There is an implicit distinction in the CDP between new development and renovation of existing development. It has been practice by the planning department to not impose the seven year occupancy condition on the renovation and extension of existing houses. The imposition of conditions 2 and 3 is incorrect.
- Issues raised in relation to the planners report and assessment. The planner dealt with the application as if it was a new dwelling.
- The house was constructed by Kerry County Council as a single rural / social cottage. The house is 'existing dwelling / recently occupied' and was occupied until the fire. It is a relatively new build with roof collapsed by fire – this situation is different to a derelict dwelling.
- The occupancy clause has already been fulfilled by the now deceased former owner and occupant.

6.2. Planning Authority Response

The planning authority responded to the grounds of appeal, stating that they have no objection to the removal of conditions 2 and 3. The planning authority were not aware of the circumstances relating to the fire.

6.3. Observations

None

6.4. Further Responses

The response of the planning authority was circulated to the appellant / applicant. The appellant / applicant submitted a further response stating the following:

- Welcome the submission of the planning authority.

- Notwithstanding the lack of specifics set out in the original application, there is a presumption that a house destroyed by fire could be restored by the family – and any restoration should not attract rural settlement conditions.
- Request the Board make positive response in this case and allow for the refurbishment to proceed and bring the house back to use.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all submissions received in relation to the appeal, and inspected the site, and having regard to relevant policies and guidance, I consider that the main issues in this appeal are as follows:

- Determination of the appeal
- Consideration of conditions 2 and 3

7.2. Determination of the appeal

- 7.2.1. The appeal relates to a development that consists of the repair, refurbishment and extension of an existing fire damaged house within a rural area. In principle the proposal to restore and extend the house is acceptable and the development satisfies the relevant objectives of the development plan in terms of design and environmental matters.
- 7.2.2. The appeal is a first party appeal against conditions 2 and 3 of a grant of permission to repair, refurbish and extend an existing house.
- 7.2.3. Condition 2 requires that the dwelling shall be occupied as a permanent residence by the initial occupant for seven years.
- 7.2.4. Condition 3 states that the use of the dwelling shall be as a primary permanent all year round private residence and that the dwelling shall not be used as a holiday home or second home.
- 7.2.5. Where an appeal is made against a condition, section 139 of the Planning and Development Act 2000 (as amended) allows the Board to restrict its determination to the condition only and to not carry out a de novo assessment of the proposed development.

- 7.2.6. I am satisfied that, having regard to the nature of conditions 2 and 3, that the determination by the Board of the application as if it had been paid to it in the first instance would not be warranted.
- 7.2.7. I recommend that the Board use its discretion and give directions relating to the attachment, amendment or removal by the planning authority of condition 2 and 3.

7.3. Consideration of conditions 2 and 3

- 7.3.1. The applicant / appellant has argued that this development proposal relates to an existing house and not to a new house, that the restrictions on the use of the dwelling imposed by conditions 2 and 3 are not warranted, and that the objectives of the County Development Plan that support occupancy restrictions, implicitly relate to new housing and do not relate to existing housing.
- 7.3.2. Based on the information available, I am satisfied that the house on this site has been in place for a considerable number of years (permission granted for council cottage in 1980, submitted engineers report states that the house was constructed by the Council in 1981 under the Rural Cottage Social Housing Scheme) and that the house was occupied up until the fire of 9th August 2019 which rendered the house in a derelict uninhabitable state. The proposal is now to refurbish and extend the house to bring it back to use. Due to the circumstances, I am satisfied that the house was not 'abandoned' in a traditional sense and that the structure has not lost its status as a dwelling.
- 7.3.3. Consideration of condition 2
- 7.3.4. Condition 2 of the grant of permission requires that the house is occupied as a place of permanent residence by the 'initial occupant' for a period of seven years. Under the Kerry County Development Plan (CDP) 2022-2028, the site is located in a 'rural area under urban influence'. The rural housing objectives of the CDP state that applicants must satisfy that they have a rural generated housing need and that permission granted for rural housing shall be subject to an occupancy condition restricting the use of the dwelling to the applicant or members of his / her immediate family as a place of permanent residence for a period of seven years from the date of first occupancy. In this regard, I am satisfied that these requirements relate to the first occupancy of a house. The house that is the subject of this proposal has already been occupied for a period well in excess of the seven year requirement and I am

satisfied that there is no requirement to attach a condition to restrict the occupancy of the house. I note that the planning authority have submitted a response to the appeal to state that they have no objection to the removal of condition 2. I also note that there are many objectives in the CDP to promote the renovation and restoration of existing rural dwellings and buildings and that the proposal would be in accordance with these objectives. In conclusion, and having regard to the above, I am satisfied that condition 2 is not necessary and should be removed.

7.3.5. Consideration of condition 3

7.3.6. Condition 3 of the grant of permission requires that the dwelling shall be the primary permanent all year round private residence and shall not be used as a holiday home or second home.

7.3.7. The development proposal is for permission to repair, refurbish and add an extension to an existing house. The appeal submission indicates that the applicant intends to sell the house or to operate it as a holiday home. However, bearing in mind the development description, the applicant has not applied for permission to use the dwelling for uses such as holiday home, second home or short term letting.

7.3.8. For reference, I note that the CDP includes objectives relating to holiday home and visitor accommodation proposals. Section 5.6 of the rural housing section relates to holiday / second homes. Objective KCDP5-23 is an objective to ensure holiday / second homes are located in settlements and not the rural landscape. Chapter 10 includes objectives relating to tourism and outdoor recreation. Section 10.3.5 sets out policies in relation to visitor accommodation. Objective KCDP10-30 encourages redevelopment of derelict or redundant buildings in appropriate locations for visitor accommodation. KCDP10-34 allows for the consideration of change of use of derelict / vacant buildings to short term letting where such buildings are not suitable for long term residential accommodation and will not have a negative impact on the long term rental market or residential amenity.

7.3.9. The planning authority have submitted a response to the appeal to state that the planning authority has no objection to the removal of condition 3.

7.3.10. I accept that generally a proposal to carry out works to an existing house would not warrant a condition restricting the use of the structure so that it is used as a private permanent residence and not as holiday / second home. However, in this case, the

applicant has clearly stated their intention to potentially use the property as holiday home. This is not what has been applied for by the applicant as set out in the development description in the public notice and documents submitted with the application.

- 7.3.11. Therefore, in the interests of clarity, in this case, I consider that it is necessary to clarify that the permission is for works to a structure that is used as a dwelling house and is not a holiday home or second home. I recommend that condition 3 be amended to provide clarification that the permission is for works to a dwelling that is to continue to be used as a place of permanent residence.

8.0 AA Screening

- 8.1. I have considered the proposed development consisting of the repair, refurbishment and extension of an existing house at Glencuttane Lower, Beaufort, Co.Kerry in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is located c 23m from the Catlemaine Harbour Special Area of Conservation.
- 8.3. The proposed development comprises the repair and refurbishment of the existing rural house and the construction of a 33.5sqm extension. The proposal includes the use of the existing access, upgrade works to the on site waste water treatment and disposal system, surface water disposal to soakpits, mains water supply and retention of existing boundary treatment and new native planting.
- 8.4. 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.
- 8.5. The reason for this conclusion is as follows:
- The small scale domestic nature of the development,
 - This is an existing house and therefore there is no material intensification of use that could have additional significant impacts,
 - The lack of direct ecological or hydrological pathways between the development and the European site network (waste water treatment and

disposal is to upgraded system and surface water disposal is to soakpits - there is minimal pollution risk associated with this proposed drainage; existing vegetation is to be retained),

- Construction works would generate possible temporary impacts including generation of noise, dust, construction related emissions to water bodies however due to small scale and domestic nature of the development and temporary nature of works and separation to the receiving features of the European site, it is unlikely that the development could generate impacts of a magnitude that could affect the QI's of the European site,
- The screening report of the planning authority which concluded that stage 2 appropriate assessment is not required,
- The proposed development will not result in any effects that could contribute to an additive effect with other development in the area.

I conclude, on the basis of the objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that condition number 2 be removed and condition number 3 be amended.

10.0 Reasons and Considerations

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

- (i) **REMOVE** condition number 2

(ii) **AMEND** condition number 3 to the following:

3. The proposed development, when completed shall be used as a dwelling that is occupied as a place of permanent residence.

Reason: In the interests of clarity.

Reasons and Considerations

Having regard to the pre existing and long established use of the structure as a dwelling house which has been occupied, including the proposal to repair, refurbish and extend this existing house, it is considered that a condition restricting the use of the dwelling as a permanent residence for seven years is not necessary.

This grant of permission is for a proposed development to carry out works to an existing house which is not a holiday home. In the interests of clarity, it is reasonable to amend condition 3 to provide clarification that the permission relates to works to a dwelling that is a place of permanent residence.

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.

Aisling Mac Namara

Planning Inspector

25th April 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	321746		
Proposed Development Summary	Permission to repair, refurbish and add extension to existing house.		
Development Address	Glencuttane Lower, Kilgobnet, Beaufort, 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 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		State the Class here.	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		State the relevant threshold here for the Class of development.	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		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	x	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____