



An
Bord
Pleanála

Inspector's Report

ABP-321873-25

Development	Retention of demolition to outbuildings with all associated works
Location	Ballyeigh, Ballybunion, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2460925
Applicant(s)	Denis Enright
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant(s)	Patrick Enright
Observer(s)	None
Date of Site Inspection	24 th April 2025
Inspector	Clare Clancy

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports.....	5
3.3. Prescribed Bodies.....	5
3.4. Third Party Observations.....	6
4.0 Planning History.....	6
5.0 Policy Context	6
5.1. Kerry County Development Plan.....	6
5.2. Natural Heritage Designations	7
6.0 EIA Screening	7
7.0 The Appeal.....	8
7.1. Grounds of Appeal.....	8
7.2. Applicant Response.....	9
7.3. Planning Authority Response.....	9
7.4. Observations.....	10
8.0 Assessment	10
8.1. Principle of Development	10
8.2. Unauthorised Development.....	11
8.3. Other Matters	11
9.0 AA Screening	14
10.0 Recommendation	15

11.0 Reasons and Considerations..... 15

12.0 Conditions..... 15

Form 1 - EIA Pre-Screening..... 17

1.0 Site Location and Description

- 1.1. The appeal site is located in the rural area approx. 2.5 km to the south of Ballybunion town. It is located along a local road to the west of the R551 and to the east of the coastline. Ballybunion golf course is located approx. 1 km to the west of the site.
- 1.2. The site comprises of an existing single storey detached dwelling with access fronting onto the public road (Gortnaskeha road). There is an access leading to the rear of the site along the western boundary of the site which extends to agricultural lands further to the rear of the site. There is an existing farm building located to the rear of the dwelling. There is an existing dwelling adjoining the site to the east and there is an access road between the appeal site and this adjoining dwelling which leads to an existing dwelling on a backland site to the north. There is a field separating the appeal site with the adjoining dwelling to the west.
- 1.3. The area is generally characterised by single storey / dormer dwellings along the Gortnaskeha road and along minor linear roads branching off this road.

2.0 Proposed Development

- 2.1. Retention permission is sought for the demolition of existing outbuildings. The following is noted:
 - Site area – 0.118 ha.
 - The floor plans indicate that the outbuildings comprised of two structures joined with one another which were located on the western boundary of the site, and within the curtilage of the existing dwelling. The larger element of the outbuilding was located to the south and the smaller element adjoined the aforementioned structure at the northern end. This area now provides access to the rear of the existing agricultural structures.
 - Overall area of structures to be retained – 85.87 m².
 - Overall ridge height of structures – 2.6 m.
 - Roof profile – mono-pitch.

- It is noted that the site layout plan indicates an existing dwelling to the rear of the application site boundary which is incorrect. This structure relates to an existing agricultural structure as clarified at time of site inspection.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 31st January 2025, Kerry County Council granted retention permission subject to one standard condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

One planning report forms the basis of the assessment and recommendation. The following is noted:

- The site is located in an area designed as a 'Rural Landscape' and objectives KCDP 11-77 and KCDP 11-78 relate to the protection of the rural landscape.
- Noted the matters raised in the third party submission in particular relating to Rights of Way or legal ownership and concluded that such matters are outside of the remit of the planning authority.
- Concluded that the applicant was seeking to regularise the demolition of the existing shed, and recommended retention permission to be granted.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One Third Party observation was received from Patrick Enright in regard to the proposed development. The issues raised are largely covered by the grounds of appeal.

4.0 Planning History

To Rear of Appeal Site

- P.A. Ref. 08/2662 – Permission granted for garage / store. This permission refers to the existing shed located to the rear of the applicant's dwelling (Denis Enright 06th February 2009).
- P.A. Ref. 08/2663 – Permission granted to demolish existing garage / store construct service road, dwelling and domestic garage. This encompasses the outbuildings the subject of this appeal (John Enright 05th February 2009).
- P.A. Ref. 08/92663 – Permission refused to Extend the Appropriate Period of P.A. Ref. 08/92663 (John Enright 31st May 2013).

5.0 Policy Context

5.1. Kerry County Development Plan

5.1.1. Volume 6 –1 Development Management Standards & Guidelines

- Section 1.5.6.9 Sheds / Garages / Ancillary Structures

Notwithstanding those developments listed under Class 3, Schedule 2 Part 1 (P & D Regs 2001 as amended), the cumulative area of all structures shall not exceed 70 sqm for private domestic use and storage only.

5.1.2. Volume 4 Map A

- Appeal site is located in an area designated 'Rural General'.

5.1.3. Chapter 11 Environment

The following objectives are relevant in regard to rural landscapes:

- Section 11.6.3.2 Rural General

Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes. Notwithstanding the higher capacity of these areas to absorb development, it is important that proposals are designated to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area. Permission will not be granted for development which cannot be integrated into its surroundings.

KCDP 11-77

Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

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.

5.2. Natural Heritage Designations

- SAC: 002165 - Lower River Shannon SAC – approx. 650 m to the south, 1.68 km to the west of appeal site.
- pNHA: 001340 - Cashen River Estuary – approx. 54 m to the south of appeal site.
- SPA: 004189 - Kerry Head SPA – approx. 5 km to the southwest of appeal site.

6.0 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 (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 appended to this report.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. One third party appeal submission was received from Patrick Enright. The substantive issues raised in the grounds of the appeal relating to the subject development can therefore be summarised as follows:

- The decision by Kerry County Council (KCC) is only a recommendation and not a legally binding decision.
- The planning report is inaccurate and incomplete.
- No reference to a local road number, this is because it is a private road which the council has not taken in charge.
- The shed was built on the folio related to John Enright without permission from Kerry County Council or John Enright.
- Photos / maps submitted for report are not what was submitted to the enforcement office.
- P.A. Ref. 08/9266 – an engineer employed by KCC was the agent employed by the applicant for this application which was a conflict of interest.

Inaccurate Information

- All relevant planning information was not provided for the planning application and is misleading and incomplete.
- Drawing Ref. 02413801 (Site Layout Plan) is incorrect as the applicant did not provide correct information.

Access / Right of Way

- Parties referenced in the appeal submission do not have right of way to access the property.
- The applicant was gifted a house and a haggard to the rear of the dwelling.
- To the rear of the dwelling, there is no size provided of the haggard.

Planning Report

- The subject development requires and EIA Screening or an EIA with regard to P.A. Ref. 08/2663 which was not carried out by KCC.
- Regarding matters relating to Rights of Way, legal ownership, the PA considered this to be outside the remit of planning which is incorrect. The Local Government Planning and Development Acts 200/2024 requires that you must be the owner of the property before planning permission can be considered, or have a letter of consent from the owner if buying the property.
- A grant of permission is not legally binding authorisation / approval.

Unauthorised Development

- Garage was built without planning permission. Reference is made to permission for a byre and dairy at Ballyeigh c. 4th December 1968 exempt from planning permission under Section 4 of the Local Government Planning and Development Act 1963.
- An Bord Pleanála authorised under planning ref. 2662 for Denis Enright's shed to be built on plan 24. Not on plan 140.
- The shed was built without planning permission.
- Requests the Board to omit the unauthorised development put on plan 140.
- John Enright and Denis Enright failed to comply with SI No. 221/1964 Local Government Planning and Development Act 194, Regulations 1964.

Supporting documents provided with the appeal included for photos and emails between the appellant and Kerry County Council Enforcement Section.

7.2. Applicant Response

None.

7.3. Planning Authority Response

None.

7.4. Observations

None.

8.0 Assessment

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/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Unauthorised Development
- Other Matters

8.1. Principle of Development

- 8.1.1. It is proposed to retain the demolition of outbuildings which adjoined one another, and which previously formed part of the curtilage of the existing dwelling. The outbuildings were located along the western boundary of the site adjacent to the existing dwelling, and had a gross floor area of 85.87 m². The overall length was approx. 22.49 m and the width approx. 4.68 m. The overall ridge height of the structures was 2.6 m at the southern elevation and 2.4 m on the north with a mono-pitch roof profile.
- 8.1.2. Having regard to the residential use of the site, the location where the structures were sited to the west of the dwelling, I do not consider that the demolition works carried out have given rise to a material change of use on the site, and I consider that the works which are the subject to this appeal, have not negatively impacted on amenities of the existing dwelling or on adjoining dwellings and that the outbuildings were of no significant architectural merit.
- 8.1.3. In considering impacts on adjoining properties, I am satisfied that the removal of the outbuildings has not impacted on adjoining residential amenities including that of the existing dwelling on the site.

8.1.4. The appeal site is located in a rural area that is characterised by agricultural land with one-off housing along the local road network. I note that the topography of the wider area is low-lying and that the site is located within an area designated as the 'Rural General' (landscape character area). Such designation has a higher capacity to absorb development. In this regard, the removal of the subject outbuildings has resulted in a reduction in impact on the visual amenities of the area. Accordingly, I consider the principle for the retention of the development to be acceptable.

8.2. Unauthorised Development

8.2.1. In the grounds of appeal, the appellant has raised the matter of unauthorised development in regard to the demolished outbuildings and submits that it did not have planning permission to begin with. Reference is also made to the location of where the structures were built and where they should have been built. It is further alleged that the existing agricultural shed located to the rear of the existing dwelling was not built in accordance with the relevant permission, P.A. Ref. 08/2662 refers and is in the incorrect location.

8.2.2. In regard to the development the subject of this appeal, the planning merits of the subject development were considered by the PA and are also considered in this assessment, and I further note that the structures were in-situ for a considerable period, as evidenced by P.A. Ref. 08/2663. In regard to the alleged unauthorised development referenced in relation to the existing agricultural shed, it is submitted that the issues raised in relation to unauthorised development are a matter for the council, and are matters in relation to which the Boards has no role in, in this case.

8.3. Other Matters

Inaccurate Information

8.3.1. The appellant states that all relevant planning information was not provided for the planning application and the application is misleading and incomplete. Concerns are therefore raised in regard to inaccurate information presented in the planning application including the application site boundaries with reference to drawing DWG Ref. 024138-01.

- 8.3.2. In terms of this alleged shortfall in the application documentation, I note the scope of development the subject of this appeal namely the retention of the demolition of the outbuildings. Having reviewed the planning application and the documentation in the appeal, it does not appear to me that any fundamental details have been omitted which would equate to a deficient planning application in relation to this appeal. I have however noted in Section 2.1 that the site layout plan incorrectly labelled the existing shed located at the rear of the dwelling as an existing dwelling, which I confirmed at time of site inspection, and I note that the application site boundaries do not incorporate this structure which I have noted also above in Section 8.2.1.
- 8.3.3. Having reviewed the drawings and having regard to my site inspection, I note that the site layout plan submitted is generally reflective of the site layout on the ground, and relates to the development which is the subject of this appeal. Therefore having regard to the nature of the proposed development, I am satisfied that the information submitted with the planning application and in relation to the appeal, is sufficient for a full assessment of the appeal to be carried out.

EIA

The appellant has raised that an EIA screening or an EIA of the subject development was not carried out by the PA. I note that the PA carried out an EIA Preliminary Examination of the subject development and concluded that the proposal was below the mandatory thresholds for residential projects, given its nature, scale and location and accordingly, did not require an EIA Screening or EIA. In Section 6.0 of this report, I have concluded that the development is not a class for the purposes of Schedule 5 of the Planning and Development Regulations 2001, as amended and there is no mandatory requirement for EIA, and a screening determination is not required.

Landownership & Right of Way

- 8.3.4. In reviewing the grounds of appeal, matters have been raised in relation to a will with reference to named beneficiaries (including the applicant), what was received, and other matters in the context of the appeal site and other planning permissions. It is also stated that mentioned parties do not have Right of Way to access property in regard to the aforementioned will.
- 8.3.5. I note the details set out in the appeal with regard to the will, however I do not consider these matters to be material considerations in the assessment of the subject

development related to this appeal, the scope for which relates to the retention of demolished of outbuildings. These are civil matters to be resolved between the relevant parties and are not a matter for the Board to consider or draw any conclusions on.

- 8.3.6. In regard to a Right of Way, I note that there is no reference in the planning application details to such Right of Way, nor do the plans and drawings indicate one. I note that the applicant is the stated owner of the appeal site which also includes for the passage along the western boundary of the site that provides access to farmland at the rear of the site.
- 8.3.7. I note that the third party appellant provided a folio reference number on a land registry document labelled page 3 of 6, however there is no accompanying land registry map attached to this folio reference number, and the document does not contain information to clarify ownership or Right of Way, as alleged by the appellant.
- 8.3.8. I note that the applicant did not submit an observation in response to the matters raised in the appeal, however I note that the applicant indicated that he is the legal owner of the subject site as per the details on the planning application form. Also the planning history of the site indicates that the applicant had the benefit of planning permission for other development relating to this site. The PA did not raise any concerns regarding the applicant's sufficient legal interest in the lands, noting that the matters raised in the third party submission to the planning application were outside of the remit of the planning authority.
- 8.3.9. There is a requirement to show any wayleaves on a site location map for the purposes of Article 22(2)(b)(iii) of the Planning and Development Regulations 2001 (as amended). In reviewing the planning application details, I note that the Right of Way referred to was not identified on the plans / drawings submitted. It is unclear from the appeal submission if the circumstances regarding landownership and Rights of Way changed on foot of the aforementioned will, as there is no evidence provided by the appellant to confirm this.
- 8.3.10. Article 22(2)(g) of the Planning and Development Regulations 2001 (as amended) states that where the applicant for permission is not the legal owner of the land or structure concerned, the application shall be accompanied by the written consent of the owner to make the application. On the basis of the information presented in the

appeal, I am satisfied that the applicant has sufficient title in these lands and that it remains open to the Board to grant permission in this case.

8.3.11. I note the provision under Section 131 of the Planning and Development Act 2000 (as amended) which enables the Board to seek further information or submissions from relevant parties, however I do not consider that this is necessary given the scope of development and the applicants legal interest in the lands. I would further note for the Board that any further legal dispute is considered a Civil Matter and is outside of the scope of the planning appeal. In any case, this is a matter to be resolved between the relevant parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.

9.0 AA Screening

9.1.1. I have considered the proposal to retain the demolition works carried out to existing outbuildings resulting in their removal, in light of the requirements S177U of the Planning and Development Act 2000 as amended.

9.1.2. The subject site is located in a rural area approx. 2.5 km to the south of Ballybunion town. It is not located within or immediately adjacent to a European site. The nearest European sites relative to the appeal site are:

- SAC: 002165 - Lower River Shannon SAC – approx. 650 m to the south, 1.68 km to the west.
- SPA: 004189 - Kerry Head SPA – approx. 5 km to the southwest.

9.1.3. No nature conservation concerns were raised in the planning appeal.

9.1.4. 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.

The reason for this conclusion is as follows:

- Small scale and nature of works carried out which related to the demolition of a structure.
- Location-distance from nearest European Sites and lack of connections.
- Taking into account the AA Screening determination by the planning authority.

- 9.1.5. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European side either alone or in combination with other plans or projects.
- 9.1.6. Likely significant effects are excluded and therefore appropriate assessment (stage 2) (under Section 177V of the Planning and Development Act 2000 as amended) is not required.

10.0 Recommendation

I recommend that retention permission is granted for the subject development.

11.0 Reasons and Considerations

Having regard to the location of the site in a rural area, to the nature and extent of the works for which retention permission is sought, and to the site context which is characterised by an existing dwelling, it is considered that, subject to compliance with the condition set out below, the proposed development would not seriously injure the visual amenities of the area. The development for which retention is sought, is therefore, in accordance with the proper planning and sustainable development of the area

12.0 Conditions

1.	The development shall be retained in accordance with the plans and particulars lodged with the planning application on the 28 th November 2024. Reason: In the interest of clarity.
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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.

Clare Clancy
Planning Inspector

21st May 2025

Form 1 - EIA Pre-Screening

Case Reference	ABP 321873-25
Proposed Development Summary	Retention of demolition to outbuildings with all associated works
Development Address	Ballyeigh, Ballybunion, Co. Kerry
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed	

<p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	<p>State the Class and state the relevant threshold</p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>State the Class and state the relevant threshold</p>
<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____