



An
Coimisiún
Pleanála

Inspector's Report ABP-322631-25

Development	Retention permission and permission to complete partly constructed extension ancillary to the use of the house, boundary treatments and all site works.
Location	Glennearagh, Glen, Emlaghmore, Co. Kerry, V23 XD62.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2560137
Applicant(s)	Maik Barthel.
Type of Application	Permission and Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Paul Lyne
Observer(s)	None
Date of Site Inspection	24 July 2025
Inspector	Natalie de Róiste

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Glenearagh, c. 7 kilometres' drive south from Portmagee, in Co. Kerry. The site is off a gated road off a local road, both of which are steep, narrow, and curved. There are a number of dwellings in the vicinity of various styles, age, and character.
- 1.2. The site slopes up steeply from the road to the rear of the site (from west to east). It contains a single-storey house with attic level, with stone cladding and pitched slate roofs. A single-storey extension has been built on to the south. The boundary to the road frontage to the west and north is a stone wall; to the south it is a timber fence; and to the east it is partly a stone wall, and partly fencing.

2.0 Proposed Development

- 2.1. It is proposed to retain and complete the house extension (c. 40 sqm), which contains a sauna, hot tub, toilet and plant room, all ancillary to the dwelling house; retain minor elevational changes to the façade; retain the stone boundary walls along the front and north of the site; and construct matching stone boundary walls on the east and south boundaries.

3.0 Planning Authority Decision

3.1. Decision

Grant permission

3.2. Planning Authority Reports

3.2.1. Planning Reports

One planning report, dated 01/05/2025, summarised as follows:

- Site location, context, internal reports, third party concerns and planning history noted. Development Plan policy on landscape protection noted. No

negative impacts on neighbouring residential amenity or visual impacts.
Soakpit acceptable. Grant recommended.

3.2.2. Other Technical Reports

- Site Assessment Unit, Environmental Department – no objection.
- County Archaeologist – report received, no mitigation required.
- Biodiversity Officer – Screening Exercise raised no issues.

3.2.3. Conditions

- Condition 3 de-exempted development falling within Class 1 (extension of a house) or Class 3 (construction of sheds, garages, etc) of Schedule 2, Part 1 of the Planning Regulations, in the interests of the amenities of the area.

3.3. Prescribed Bodies

No reports received.

3.4. Third Party Observations

One received, from the appellant, who owns adjoining lands. Issues raised were as per the appeal.

4.0 Planning History

Two files (93/1303 and 19/1049) were provided as history files and referred to in the planner's report. The latter file referred to application reg ref 16/658, which is available to view on the council website.

- 93/1303 (parent permission)

Permission granted for a dwelling house, subject to 9 conditions.

- 16/658

Permission and retention permission granted for conversion of attic to domestic use, retain change of use of dwelling to foster home, retain plant room extension to south side of building, retain elevational changes to building as constructed, permission to install a wastewater treatment unit on a raised percolation area.

- 19/1049

Permission granted for change of use from foster home with education facilities to use as a dwelling house (as previously granted under parent permission), subject to 2 conditions.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-28

5.1.1. Section 11.6 sets out policies, objectives and guidance in relation to landscape protection as follows.

5.1.2. The following objectives relate to protection of the rural landscape:

- *Objective 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.

- *Objective 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.

Section 11.6.3 Landscape Designations

In the preparation of landscape designations for the County, the Planning Authority has had regard to the Landscape Review of County Kerry which outlines the quality of a landscape itself, but also the level of existing development and the ability of the landscape to absorb further development without altering it to an unacceptable degree.

Designations are not wholly dependent on a hierarchy of the quality of landscapes. Designations also reflect the importance of a landscape to the overall amenity of a locality and its importance to communities within these areas. There are two landscape designations for the county.

1 Visually Sensitive Areas

2 Rural General

It is important that development in all areas be integrated into its surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Development in areas outside of designated areas, 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.

Section 11.6.3.1 Visually Sensitive Areas

Visually sensitive landscape areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation.

These areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area.

The County enjoys both a national and international reputation for its scenic beauty. It is imperative in order to maintain the natural beauty and character of the County, that these areas be protected.

- 5.1.3. Volume 6 of the plan deals with Development Management Standards in Section 1, with *Section 1.5 Residential Development* having detailed guidance on a number of development types, but none specific to extensions to rural houses.

5.2. Natural Heritage Designations

SPA 004154 Iveragh Peninsula SPA – 100 metres south

SPA 004003 Puffin Island SPA – 900 metres south west

5.3. EIA Screening

- 5.3.1. 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 in Appendix 1 of report.

5.4. Water Framework Directive Screening

- 5.4.1. The subject site is located in a rural area 7.2 kilometres' drive from Portmagee in Co. Kerry. It is 180 metres south of a branch of the Alachaí_Beag_Theas_10 River, within the Alachaí_Beag_Theas_10 sub basin (IE_SW_21A160930). It is located c. 500 metres from the South Western Atlantic Seaboard Coastal Water Body (IE_SW_150_0000). The site is located on top of the ground water body Beara Sneem IE_SW_G_019).
- 5.4.2. The proposed development comprises the provision of an extension to an existing house and the construction of boundary walls.
- 5.4.3. No **water deterioration concerns were** raised in the planning appeal.
- 5.4.4. I have assessed the development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.
- 5.4.5. The reason for this conclusion is as follows:
- the small scale and nature of the development
 - the distance from the nearest water bodies and the lack of hydrological connections

5.4.6. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

5.4.7.

6.0 The Appeal

6.1. Grounds of Appeal

One appeal was received from a third party, owner of adjoining agricultural lands. Issues raised are summarised below.

- The extension to be retained interferes with a wayleave for water across the applicant's site to the appellant's agricultural lands. This wayleave has not been honoured, requiring the appellant to bring water in for his animals in bulk tanks.
- This is an unauthorised development, and the enforcement section of the planning authority have confirmed that. Unauthorised waste disposal has taken place, and the Environmental Officer for the Environmental Section of Kerry County Council had to be involved.
- The site notice was not erected in the right place, and not visible from the public road.
- The extension is larger than the stated size of 40 sqm, closer to 70 sqm.
- The site has issues with surface water and septic water, with surface water flowing onto the road and the neighbouring agricultural land to the south. Drains have been filled in, compromising any pre-existing soak-pit.
- Major quarrying and rock breaking has taken place on site, with illegal dumping of rubble and waste.
- The front boundary wall is taller than shown on the drawing, extremely obtrusive, and not in keeping with the area. The wall is unsightly and should

be lowered. No drawings have been submitted for the boundary walls to the east and south. Legal proceedings are underway regarding the boundary – the applicant has disputed the position of the boundary, but proposes to build on it. The lack of drawings makes it impossible to assess the impact of the boundary walls.

- The extension is out of character with the existing house – the large windows are not in keeping with the existing house. The location is obtrusive, and it should have been located to the rear. It was deliberately positioned on a registered right of way for the appellant's water pipe.
- The house layout is not as permitted.
- Works on the boundary walls were commenced before the final grant of permission was made.

6.2. Applicant Response

The response from the applicant's agent is summarised as follows:

- Should a wayleave exist, there is no issue to provide a water supply to the neighbouring lands to the south. Correspondence is attached regarding the issue, from the applicant's solicitor.
- The extension was built in good faith, by the applicant, who assumed it was exempt as it was less than 40 sqm.
- The site notices were adequate, and its clear from the appellant's photographs he could see them.
- The drawings are accurate.
- The septic tank is adequate. Capacity is calculated by the population equivalent using the dwelling (the number of people), not by the number of toilets in the house. The pipe in the photograph submitted by the appellant comes from the base of a barbecue unit, has its outlet in the Barthel's registered property, and has been blocked for some time.
- No rock breaking has taken place since the planning application was submitted.

- Regarding the alleged illegal dumping, the matter has been clarified with Kerry County Council and nothing has been heard from them.
- The front boundary wall is measured from its foundation level, the level of the original boundary ditch. The road level is lower than the foundation level.
- Regarding the southern boundary, the applicant intends to build a wall on the boundary as defined by the land registry map, with works to be commenced once the dispute is dealt with by the courts.
- The extension will have no negative impacts on neighbouring residential amenity – the appellant owns agricultural lands only.
- The extension is not obtrusive on the skyline, and has no negative visual impacts. Photographs are supplied to illustrate.
- Construction of the foundation for the boundary wall to the was commenced in good faith, in the belief it was exempted development. It has since ceased pending permission.
- The planning authority was satisfied with the development, and had no concerns.
- The Board is requested to uphold the decision.

6.3. Planning Authority Response

None received.

6.4. Observations

None received.

6.5. Further Responses

None received.

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 and the report 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 issue in this appeal to be considered is as follows:

- Legal issues
- Impact on neighbouring property
- Visual Impacts
- Drainage

7.2. Legal issues

7.2.1. A large amount of information has been submitted by both the applicant and the appellant regarding the appellant's access rights to water, the location of the boundary between the properties, and the erection of fences and walls to demarcate the boundary.

7.2.2. I am satisfied that the applicants have provided sufficient evidence of their legal interest to make an application. Any further legal dispute regarding the burden on the folio, and the demarcation of the boundary, is considered a civil matter, and outside the scope of the planning appeal. This is a matter to be resolved between the parties, having regard to the provisions of S. 34(13) of the 2000 Planning and Development Act, which states that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development.*'

7.2.3. The appellant raises issues regarding the validity of the application due to the location of the site notice and the accuracy of the drawings submitted. I note that these matters were considered acceptable by the planning authority, which is responsible for validation of planning applications. I am satisfied that these issues did not prevent the concerned party from engaging with the planning process or making representations.

- 7.2.4. The appellant raises concerns regarding the removal and disposal of spoil from the site due to the excavation. Impacts from the resulting level changes are discussed below. The proper disposal of waste material is enforced by the relevant local authority and the Office of Environmental Enforcement, and not an issue for An Coimisiún.
- 7.2.5. The appellant raises concerns regarding the unauthorised nature of the development, and gives details of his dealings with the enforcement section of the planning authority. I note that an application for retention of development is an appropriate mechanism to address unauthorised development.

7.3. Impact on neighbouring property

- 7.3.1. A single-storey extension (c. 40 sqm) has been constructed to the south side of the existing house, with a pitched roof with a ridge height of c. 4.5 metres. Due to the steep slope of the site, a certain amount of excavation has been undertaken to level the site in this area to match the level of the existing house. The area of rock excavated is indicated on the site plan, but the depth of the excavation is not indicated. The applicant states that excavation was completed prior to the submission of the planning application.
- 7.3.2. I have undertaken a site visit, and in my view neither the construction of the extension nor the excavation of part of the site has significant negative effects on any neighbouring landowner. The extension is set back by c. 9.5 metres from the boundary to the south, and by c. 18 metres from the boundary to the east, which border agricultural lands. The excavated area is c. 6 metres from the south boundary, and c. 16 metres from the rear boundary. The nearest residential property is c. 80 metres to the north of the extension.
- 7.3.3. I note the appellant disputes the size of the extension; I have undertaken a site visit, (and also note the extensive photographic record in the council planner's report), and found it to match the drawings as submitted, in footprint and elevations.

7.4. Visual Impacts

- 7.4.1. The extension is relatively modest in size, and matches the house in its materials. The site is not a significant feature in any long views. It is located on a private road

off a local road which is not a major tourist route, not being a through road. The site is not visible from the R566/Skellig Ring, which has designated views and prospects as noted on Map P of the Landscape Designations Map in Volume 4 of the Development Plan, due to the topography of the area, and the intervening high ground. While the site is an elevated one, visual impacts are limited to a small number of neighbours in the immediate vicinity, with the extension set back behind the house, and only partly visible from the public road. I have no concerns regarding the picture windows, due to their limited visibility.

- 7.4.2. The walls to be retained (to the west – the boundary with the road – and the north) are rubble stone walls with intermittent square piers, that to the north having a pier height of 1.6 metres, and that to the road boundary having a greater height, of over 2 metres. While the style is not a traditional one, they are not visually obtrusive, following the contours of the landscape, and using an unobtrusive colour palette. Visual impacts are acceptable. The walls to be constructed to the south and east are stated in the application to be *‘stone boundary wall on the east and south sides of the site to match the existing boundary wall on the north side’*. However, as the appellant points out, no elevation drawings have been provided (although their location is indicated on the site plan). Drawings have been provided for the existing walls to the north and west. Given the nature of this element of the development, I am satisfied that the height, material, and appearance of the proposed walls has been adequately advertised, and I do not consider there to be any ambiguity.

7.5. Drainage

- 7.5.1. The appellant raises concerns regarding impacts on drainage due to the development, and concerns regarding drainage on the site generally, both the functioning of the septic tank and the surface drainage. Minimal information has been submitted with the application regarding drainage. However, I note that in planning application 19/1049, further information was submitted on the functioning of the septic tank, to the satisfaction of the planning authority. I note that the proposed extension would not increase the population of the house, and as such, no amendments to the septic tank are required as a result.

- 7.5.2. Regarding surface drainage, the local authority attached a standard condition regarding drainage. Such a condition is appropriate.

7.6. Other issues

- 7.6.1. The Local Authority attached a condition de-exempting development (house extensions and the construction of sheds) 'in the interests of the amenities of the area', with no further justification given in the planner's report. This appears to me to be an unnecessary and onerous condition, given the size and location of the site, the lack of immediately adjacent residential neighbours, and the planning history of the site. I do not recommend attaching such a condition.

I note the appellant's concerns regarding the layout not matching the original plans. I note the application 16/658 which was granted retention permission for as-built designs. In any case, the number of bathrooms in the existing house is not a pertinent consideration.

- 7.6.2. Regarding the commencement of works prior to a grant of planning permission, I observed a stretch of boundary wall constructed to the east, on my site visit. The applicant's agent has stated their belief that such works fall under the exemption set out in Schedule 2 Part 1, but that nonetheless works were ceased pending the result of the appeal. No work was ongoing at the time of my site visit. As noted above, enforcement, should it be required, is the purview of the Local Authority.

8.0 Appropriate Assessment

- 8.1.1. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.
- 8.1.2. This determination is based on:
- The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European site

- The buffer zone between the proposed development and the European site
- The lack of direct connections between the site of the development and the European site

9.0 Recommendation

I recommend a grant of permission.

10.0 Reasons and Considerations

Having regard to the nature, scale, siting, and design of the proposed development; the characteristics of the site as a whole; the provisions of the Kerry County Development Plan 2022-28; it is considered that subject to compliance with the conditions set out below, the proposed development would not have any significant adverse impact on the amenities of adjoining properties, or on visual amenity, would not be prejudicial to public health or the environment, and would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interests of sustainable drainage.

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.

Natalie de Róiste
Planning Inspector

2 September 2025

Form 1 - EIA Pre-Screening

Case Reference	Retention and completion of house extension and boundary walls.
Proposed Development Summary	Glennearagh, Glen, Emlaghmore, Co. Kerry.
Development Address	Retention and completion of house extension and boundary walls.
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 type of proposed road	

<p>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>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____