



An
Coimisiún
Pleanála

Inspector's Report

PL-500506-KY-25

Development	To retain existing rear extensions to his building and to retain existing domestic shed and all associated site works.
Location	24 Church Street, Cahersiveen, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	25/60451
Applicant(s)	Rory McCarthy
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party
Appellant(s)	Dan Dennehy
Observer(s)	None
Date of Site Inspection	05-03-2026
Inspector	Adam Kearney

1.0 Site Location and Description

- 1.1. The appeal site at 24 Church Street, Cahersiveen, is part of a terraced urban core with mixed commercial, residential, and civic uses. It faces the Daniel O Connell Church and Oratory to the north. The property extends behind the main building with existing extensions, ramp access, and an outbuilding in a compact area. Surrounding plots are densely built with limited rear separation. A family-owned adjacent property to the south provides a vehicular right of way and parking for staff and owners.

2.0 Proposed Development

- 2.1. The proposal relates to the retention of development carried out to the rear of the property, comprising extensions to the main building together with a detached outbuilding and associated access works. The works already undertaken include additional built floor area serving both residential and commercial functions, a ramped access arrangement, and a small ancillary structure located within the rear yard.

3.0 Planning Authority Decision

- 3.1. Kerry County Council on 26/12/2025 granted Retention Permission for the development at 24 Church Street, Cahersiveen. In reaching their decision, the Authority concluded that, having regard to the nature, extent, and location of the works, the existing development would not be visually obtrusive, would not seriously injure the amenities of the area, and would not be contrary to the proper planning and sustainable development of the area, subject to compliance with the conditions attached to the permission.
- 3.2. One condition of note was Condition 3, which restricts the use of the retained shed to domestic storage purposes only, expressly prohibiting any commercial or agricultural use. This condition regulates the future use of the structure and was imposed to ensure that the development remains ancillary in nature and does not give rise to an intensification of use beyond that assessed by the PA.

3.3. Planning Authority Report Summary

- The application sought retention permission for existing rear extensions, a domestic shed, and associated site works.
- The site is mixed-use, with a restaurant at ground floor and residential accommodation above.
- Two third-party submissions were received, including one from TII and one from a neighbouring party raising issues around 'legal interest', 'right of way', and a 'blocked doorway'.
- Initial internal assessments raised concerns about unclear vehicular access, parking arrangements, and the need for a detailed floor-area breakdown.
- Further information was requested, requiring a revised site layout map showing access and parking and a table of all floor areas
- The applicant's further information response was accepted, clarifying access via family-owned land, confirming no formal parking spaces, and providing floor-area figures.
- No technical objections remained, and no further reports were required after the FI response.
- Development contributions were calculated, applying only to the commercial element (80.3 m²), totalling €2,168.10.

3.3.1. Other Technical Reports

Biodiversity Officer (Kerry County Council) A Notional Screening Exercise under Section 34 (12) of Planning and Development Act 2000 was carried out by the Biodiversity Officer – no issues were raised.

3.4. Prescribed Bodies

TII (10/5/2025)

In the case of this planning application, Transport Infrastructure Ireland requests that the planning authority has regard to the provisions of official policy for development proposals as follows: proposals impacting national roads, to the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities and relevant TII

Publications and proposals impacting the existing light rail network, to TII's "Code of engineering practice for works on, near, or adjacent the Luas light rail system".

3.5. Third Party Observations

A submission was received from the adjoining landowner at No. 23 Church Street, asserting that the applicant lacks sufficient legal title to the lands on which the unauthorised works were constructed. The submission also claims that the development obstructed a long-established doorway and access route serving No. 23 and that part of the works encroach onto unregistered land. These matters are also raised in the appeal,

4.0 Planning History

No recent planning history of relevance.

5.0 Policy Context

5.1. Kenmare Municipal District Local Area Plan 2024-2030

- 5.1.1. The site is zoned M2 Town/Village Centre in the Caherciveen Local Area Plan as contained in the Kenmare Municipal District Local Area Plan 2024-2030.

This zoning supports: Mixed use, reuse and retention of existing buildings town centre consolidation, the proposed retention works are consistent with this zoning objective.

5.2. Kerry County Development Plan 2022–2028

- 5.2.1. The relevant CDP policy:

Town Centre & Settlement Policy supports compact growth, infill, reuse of existing structures, and strengthening town centres.

- 5.2.2. Development Management Standards relevant sections include:

- Extensions to existing buildings
- Access and parking
- Visual impact and design

- Residential amenity
- Servicing (water, wastewater, surface water)
- Transport & Access Policy Requires safe access and clarity of vehicular movement

5.3. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Iveragh Peninsula SPA (Site Code: 004154) which is located approximately 800m to the north west of the site. The Valencia Harbour/Portmagee Channel SAC (Site Code: 002262) lies approximately 1.9km to the west of the site. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) lies approximately 3.5km to the northeast of the site.

5.4. **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 in Appendix 1 of report.

6.0 **The Appeal**

Third Party Grounds of Appeal – Summary of main points.

- The appellant contends that the applicant lacks sufficient legal title to all lands on which the unauthorised development has been carried out, with part of the development alleged to be on unregistered land without consent.
- It is argued that the application should have been invalidated, with reliance placed on *Sweetman v An Bord Pleanála* regarding mandatory third-party consent.
- The development is alleged to have obstructed a long-established doorway and access route serving No. 23 Church Street.

- It is claimed that this access led onto unregistered land and was acknowledged by the applicant in further information.
- The appellant contends that the Planning Authority failed to adequately assess impacts on existing access arrangements and third-party property rights.
- The appeal challenges the grant of retention permission on the basis that planning permission cannot legitimise development interfering with third-party rights, having regard to Section 34(13) of the Planning and Development Act 2000.
- It is further argued that the Planning Authority failed to properly address these issues, resulting in a lack of fair process.
- Granting retention permission in these circumstances is said to set an undesirable precedent and undermine proper planning and sustainable development.

6.1. **Applicant Response in the case of a 3rd Party Appeal**

An Applicant's Response dated 22 January 2026, submitted by Cashell Solicitors on behalf of the applicant

- The response addresses the sole ground of appeal relating to alleged deficiencies in legal title, ownership, and access arrangements affecting the appeal site.
- The submission outlines the established principle that matters of land ownership, title, and private rights of way are not planning considerations, having regard to Section 34(13) of the Planning and Development Act 2000 (as amended) and relevant case law.
- Notes that the planning system is concerned with the regulation of land use and development and does not decide on civil disputes relating to property rights or boundaries.

6.2. Planning Authority Response

No further response was received from the Planning Authority

7.0 AA Screening

I have considered the proposed retention of the existing rear extensions and existing domestic shed and all associated site works. requirements of S177U of the Planning and Development Act as amended. The site is not located within any designated site. The closest Natura 2000 site is the Iveragh Peninsula SPA (Site Code: 004154) which is located approximately 800m to the north west of the site. The Valencia Harbour/Portmagee Channel SAC (Site Code: 002262) lies approximately 1.9km to the west of the site. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) lies approximately 3.5km to the north east of the site

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

- Retention of existing rear extensions and domestic shed and all associated site works.
- The town centre location of the development with connections to mains drainage

I consider that the proposed development would not be likely to have a significant effect individually or in-combination with other plans or projects, on a European site and appropriate assessment is therefore not required.

8.0 Water Framework Directive

- 8.1. The Valencia Harbour/Portmagee Channel SAC (Site Code: 002262) lies approximately 1.9km to the west of the site. The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) lies approximately 3.5km to the northeast of the site.

- 8.2. The proposed development comprises the retention of the existing rear extensions and existing domestic shed and all associated site works
- 8.3. 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.
- 8.4. No specific water deterioration concerns were raised by the PA
- 8.5. The reason for this conclusion is as follows:
- small scale and nature of the development to be retained
 - town centre location and connection to mains drainage
 - lack of hydrological connections

8.6. Conclusion

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.

9.0 **Assessment**

9.1. **Overview**

- 9.1.1. Having reviewed the planning application, the appeal documentation and having carried out a site inspection, I consider the following to be the relevant matters for assessment:
- Principle of Development
 - Visual Impact
 - Residential Amenity

- Procedural Matters
- Legal and Ownership Issues

9.2. Principle of Development

- 9.2.1. The appeal site is located within the established town centre of Cahersiveen and is zoned M2 Town/Village Centre under the Kenmare Municipal District Local Area Plan 2024 - 2030. This zoning supports mixed-use development, the reuse and retention of existing buildings, and the consolidation of development within the town centre. The proposal relates to the retention of extensions and ancillary structures serving an established mixed-use building and does not introduce a new or incompatible use. I consider that the development accords with the zoning objectives of the Local Area Plan and with the settlement and town-centre policies of the Kerry County Development Plan 2022–2028.

9.3. Visual Impact

- 9.3.1. The retained development is confined to the rear of the property within a backland area typical of historic town-centre plots. It is not visible from the public street and does not alter the established streetscape or the setting of nearby buildings. The scale and form of the extensions are subordinate to the main structure and integrate satisfactorily with the surrounding built environment. I am satisfied that the development does not give rise to an unacceptable visual impact.

9.4. Residential Amenity

- 9.4.1. The surrounding area is characterised by a mix of residential and commercial uses with limited rear yard separation. In this context, the retained works do not result in undue overlooking, loss of light, or over-intensification of use. The condition imposed by the Planning Authority restricting the use of the shed to domestic storage purposes further ensures that the development remains ancillary in nature and does not adversely affect the amenities of adjoining properties. I consider that residential amenity has been adequately protected.

9.5. Procedural Matters

9.5.1. The Planning Authority assessed the application in accordance with the Planning and Development Act and Regulations. Where questions arose in relation to access, parking and floor-area calculations, further information was appropriately sought and subsequently provided. Third-party submissions were considered and the relevant planning issues addressed. I am satisfied that the application was properly assessed and that no procedural deficiencies arise that would warrant overturning the decision. In terms of questions surrounding the validation process, the PA assessed the applicant had sufficient legal interest to make a valid planning application in the first instance.

9.6. **Legal and Ownership Issues**

9.7. The appellant raises concerns regarding land ownership, alleged encroachment, and the obstruction of a historic doorway and access arrangement serving the adjoining property. While these matters are set out in some detail, no documentary or legal evidence was submitted that would enable the Board to verify the existence, extent, or legal status of any claimed right of way or third-party interest in the lands concerned. The material provided consists primarily of assertions, photographs, and annotated mapping, which, while noted, do not establish legal entitlement or ownership for the purposes of the planning process.

In this context and having regard to Section 34(13) of the Planning and Development Act 2000 (as amended), issues relating to land title, private rights of way, or access arrangements are civil matters between the parties. A grant of planning permission does not confer any right to carry out development on land not owned by the applicant, nor does it affect the validity of any private legal arrangements. Such matters do not fall to be determined as part of this appeal.

10.0 **Recommendation**

10.1. I recommend that permission be Granted for the proposed development

11.0 **Reason and Considerations**

12.0 Having regard to the town-centre location of the site; the zoning objectives of the Kenmare Municipal District Local Area Plan 2024–2030; the policies of the Kerry

County Development Plan 2022–2028; the nature, scale and rear-yard location of the retained development; and the absence of adverse impacts on visual or residential amenity, it is considered that the proposed development would be acceptable in planning terms and would accord with the proper planning and sustainable development of the area.

13.0 Conditions

1.	<p>The proposed development shall be 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 proposed development shall be carried out and completed in accordance with the agreed particulars</p> <p>Reason: In the interest of clarity</p>
2.	<p>Surface water arising from the development shall be disposed of in a manner acceptable to the Planning Authority. Details of the surface water disposal arrangements shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of any further development works.</p> <p>Reason: In the interest of public health and environmental protection</p>
3.	<p>The detached shed located to the rear of the property shall be used for domestic storage purposes only and shall not be used for commercial, industrial, or agricultural purposes.</p> <p>Reason: To regulate the future use of the site</p>
4.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning</p>

	<p>and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p>
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Note: The developer should note that in accordance with section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission under this section to carry out any 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.

Adam Kearney

Planning Inspector

9th March 2026

Appendix A: Form 1 EIA Pre-Screening

Case Reference	PL-500506-KY-25
Proposed Development Summary	retention of the existing rear extensions and existing domestic shed and all associated site works.
Development Address	24 Church Street, Cahersiveen, 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 <u>Part 1</u>, 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.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q	
3..Is the proposed development of a CLASS specified in <u>Part 2</u>, 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 development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	
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)?	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____

Date: _____