



An
Coimisiún
Pleanála

Inspector's Report

PL-501308-KY-26

Development	Renovate existing dwelling, raise roof level, convert attic. Demolition of rear extension and shed. construct rear extension and associated site works.
Location	Emlagh West, Cooleen, Dingle, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	26/60119
Applicant(s)	Marykate Collins
Type of Application	Permission
Planning Authority Decision	Grant Permission + Conditions
Type of Appeal	Third Party Normal Planning Appeal
Appellant(s)	Boscó Ó Chonchúir and Máirín Uí Chonchúir
Observer(s)	None
Date of Site Inspection	28th July 2026
Inspector	Suzanne White

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1.0 Site Location and Description

- 1.1. The application site comprises a detached single storey hipped roof dwellinghouse and its curtilage, located on the eastern side of Cooleen (An Cúilín), a cul-de-sac in Dingle town.
- 1.2. The streetscape of this part of Cooleen (An An Cúilín) comprises a mixture of single and two storey, predominantly detached residential dwellings. The dwellings on either side of the appeal site are two storeys in height. The dwelling opposite, The Boathouse, is on the Record of Protected Structure (ref. RPS-KY-0291).
- 1.3. At the end of the cul-de-sac to the south is Cooleen Business Centre. To the west, beyond the opposite row of dwellings, is Dingle Harbour.
- 1.4. The site area given is 0.3 hectares.

2.0 Proposed Development

- 2.1. The proposed development seeks planning permission to:
 - demolish an existing rear extension (12sqm) and detached shed (9sqm);
 - raise the roof level (height) of the single-storey dwelling house to convert and extend (16sqm) the attic space into living accommodation with rooflights to the front elevation;
 - for a single storey rear extension of 62sqm;
 - for elevational changes to the structure, including front facing rooflight; and
 - for permission for all associated site works.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the proposed development, by order dated 14th April 2026, subject to six conditions.

3.1.1. Conditions

Condition 3 requires that the demolition on site be carried out in a safe manner, avoiding damage to, or impingement on, adjoining property and also requires an asbestos survey and preparation of a waste management and disposal plan.

Condition 6 requires the retention of existing boundary screening.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the Planner's Report may be summarised as follows:

- Mix of house styles in the vicinity.
- A previous application Reg. No. 25/60223, for a significant dormer type extension upwards including extension to the rear with a total floor area of 126sqm was refused permission on grounds of design and impact of same on dwellings in area.
- The current proposal is significantly altered from previous proposal maintaining a single storey style. There are detached dwellings on adjoining sites which are two storey to northeast and a storey and a half to southwest. The proposal for an extension can be considered.
- A submission has been received from the neighbouring property stating that there is a section between the applicant's property and theirs which is in shared ownership and is registered as an undivided moiety. They say the right of way (ROW) has not yet been formalized. The applicant submitted a land registry map with folio details showing their ownership of the site. It is considered that this is sufficient evidence to show the applicant has a legal interest in the site. In addition, the applicant has indicated this right of way and undivided moiety on the Site Layout Maps submitted. The proposed development does not impact on the ROW.
- The proposal is not likely to impact negatively on residential amenities in the area.
- The visual impact is rated acceptable. The current proposal by reason of design and scale should integrate well with the dwelling house on site and with dwellings in the area.

- Appropriate Assessment screened out. The proposal is not one which requires EIA screening or EIA.

3.2.2. Other Technical Reports

- None recorded.

3.3. Prescribed Bodies

TII – requests that the planning authority has regard to the provisions of official policy for development proposals.

3.4. Third Party Observations

One third party submission was received by the planning authority, from the appellants in this case. I consider that the points raised are adequately covered in the grounds of appeal, summarised in Section 7 below.

4.0 Planning History

25/60223 – permission refused to: (A) Renovate an existing single storey dwelling house with minor elevational changes (B) to raise the roof level (height) of the single storey dwelling house to convert the attic space to living accommodation with first floor box dormer to the front (C) to extend the property to the rear and for permission for all associated site works, for the following reason:

1. It is considered that the proposed development by virtue of design, scale & bulk would not integrate with the dwelling house on site and would be unduly obtrusive in the area. It is considered that the proposed development would constitute over-development of this site and would result in substandard residential development which would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

02/1750- permission granted to erect extension, 81sqm to existing dwelling house and associated site works. Not implemented.

02/1026- permission refused to erect extension, 81sqm to incorporate apartment to existing dwelling house and associated site works.

5.0 Policy Context

5.1. Development Plan

The Kerry County Development Plan 2022-2028 is the statutory development plan for the area. Variation No.3 to the Development Plan, Castleisland-Corca Dhuibhne Municipal District Settlements' Plan, was made on the 15th June 2026.

The appeal site is located within the settlement boundary of Dingle town and has the zoning 'RE2- Existing Residential', according to Variation No.3 to the Development Plan, Castleisland-Corca Dhuibhne Municipal District Settlements' Plan.

Land Use Zoning – Volume Six

R2- Existing Residential. Objective: Provide for residential development and protect and improve residential amenity. Description: For existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development. May also include a range of other ancillary uses for residential, particularly those that have the potential to foster the development of residential communities. These are uses that benefit from a close relationship to the immediate community, such as crèches, some schools and nursing homes. A limited range of other uses that support the overall residential function of the area may also be considered.

Development Management Standards and Guidelines – Volume Six

Section 1.5.6.1 Extensions to Dwellings

Rear/Side Extensions will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining.

In determining applications for first floor extensions, the following will be considered:

- Degree of overshadowing, overbearing and overlooking - along with proximity, height and length along mutual boundaries.
- Size and usability of the remaining rear private open space.
- Degree of setback from mutual side boundaries. No part of the extension shall encroach or overhang adjoining third party properties.

Alterations at Roof/Attic Level Roof alterations/expansions to main roof profiles (changing the hip-end roof of a semi-detached house to a gable/'A' frame end or 'half-hip' for example) and additional dormer windows will be assessed having regard to the following:

- The character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Established streetscape character and roof profiles.
- Dormer extensions to roofs, i.e. to the front, side and rear, will be considered with regard to impacts on existing character and form and the privacy of adjacent properties.

5.3 National Guidance

Development Management Guidelines for Planning Authorities 2007.

5.4 Natural Heritage Designations

The site is not located within a designated site. The nearest designated sites are:

- Dingle Peninsula SPA (004153) c. 1.85km to the south
- Mount Brandon SAC and pNHA (000375) c. 1.04km to the north
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070) c. 12.08km to the northeast
- Blasket Islands SAC (002172) c. 12.89km to the southwest

6.0 EIA Screening

- 6.1. 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).

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeal was received, from the occupiers of the existing dwelling to the north of the appeal site. The issues raised in the Appellant's grounds of appeal may be summarised as follows:

- The passageway between the application site and the property to the north is owned by the owners of both properties as tenants in common, in the form of an undivided moiety. Title documents are included with the grounds of appeal.
- The parties are co-owners of the passageway. Concern is therefore raised at the suggestion in the application documents that the applicant would allow access to the appellants, subject to reasonable notice.
- The land registry map submitted to the planning authority as unsolicited further information mistakenly suggests that the applicant is the sole owner of the passageway.
- The application was required to have been accompanied by a letter of consent from the appellants, pursuant to Article 22(2)(g) of the Planning and Development Regulations 2001, as amended. As no such consent was sought, the planning application is therefore invalid.
- Alternatively, planning permission ought to be refused on the basis that the applicant does not have a sufficient legal basis to carry out development on the lands within the red line boundary.
- Concern raised at the unfairness of the process, whereby the applicant submitted unsolicited further information (land registry documents) to the planning authority which was accepted, but that submissions on that information by the appellants were not accepted. There is no statutory provision for the submission or acceptance of unsolicited further information and it should not have been accepted by the planning authority. Not to accept further information from third parties breached fair procedures and natural justice and tends to undermine public confidence in the fairness and integrity of the planning process.
- The application plans and particulars appear to show the passageway as being integrated into and forming part of the applicant's rear garden. A proposed utility door opens onto the passageway and it is unclear what works

the applicant proposes to carry out here e.g. whether a step may be installed and what impact this would have on the legal rights over the land and amenity for occupiers of the adjacent dwelling.

- In the event of a grant of permission, request conditions preventing development on the passageway without the consent of the appellants and requiring clear and verifiable separation between the passageway and the applicant's house and garden.

7.2. Applicant Response

The applicant's response to the grounds of appeal may be summarised as follows:

- In relation to the validity of the application, the appellant misquotes the regulations. The correct regulation (22),(2),(g), amended by S.I. No.9 of 2021 Planning and Development (Amendment) Regulations 2001 states that an application shall include: 'where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application'. The lands concerned is the land on which the development will take place – no development is proposed on the 'undivided moiety' and no planning impacts (e.g. impedance of access, overlooking, shading etc) will result on this land. In any case, the Regulations make clear (2001, 22, (1), (d)) the real interest of the planning authority is to establish, not the finer legal points of property, but only what is relevant to planning, namely that the applicant has a legitimate interest in the land.
- The issue of legitimate interest in the land was carefully considered in the Planner's Report. No part of the development encroaches on the passageway. It is unaffected in physical and functional terms.
- Planning authorities routinely accept Unsolicited Information during the processing of an application. Acceptance of such information and timescales for doing so is at the discretion of the local authority. The Appellants made their submission on the unsolicited information on 8th April, 7 weeks after the application was submitted. The applicant's agent's unsolicited information did not raise new material, only clarification of existing information.

- The applicant submitted an application in good faith, clearly identifying the status of the 'undivided moiety'. The planning authority decided that sufficient legal interest in the land concerned had been demonstrated.

7.3. **Planning Authority Response**

None received.

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 inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Legal interest
- Procedural issues
- Other issues - conditions

I note that consideration was given to other relevant matters as part of the planning authority's assessment of the application, including residential and visual amenity. The Planner's Report considered that the proposed development was acceptable in reference to the objectives of the Development Plan regarding these matters, subject to conditions, and I concur with that assessment.

8.1. **Legal interest**

- 8.1.1. The third-party appellants raise concern that the application site boundary includes land which they own jointly with the applicant as tenants in common in the form of an 'undivided moiety'. In this regard they raise concern that the application documents suggest that the applicant would restrict their access to the jointly owned lands, may implement development on those lands and may integrate those lands into their (the applicant's) rear garden. On a related point, the appellants maintain that the application is invalid as it was not accompanied by a letter of consent from them as landowners, pursuant to Article 22(2)(g) of the Planning and Development Regulations 2001.

- 8.1.2. The applicant, in their response to the appeal grounds, states that the correct regulation is (22),(2),(g), amended by S.I. No.9 of 2021 Planning and Development (Amendment) Regulations 2001. They maintain that the relevant factor is the land on which the development will take place and state that no development is proposed on the 'undivided moiety' and no planning impacts (e.g. impedance of access, overlooking, shading etc) will result on this land.
- 8.1.3. The Planner's Report noted the land registry map with folio details submitted by the applicant and considered that this provided sufficient evidence to show the applicant has a legal interest in the site. They also noted that the right of way and undivided moiety was indicated on the Site Layout Maps submitted and that the proposed development does not impact on the ROW.
- 8.1.4. Article 22(2)(g) of the 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.
- 8.1.5. The courts have been clear that the intent of art. 22(2)(g) is to guard against frivolous and vexatious applications by persons with no interest in the lands and, accordingly, with no prospect of being able to carry out the proposed development. In *Frascati Estates v. Walker* the Judge held as follows:
- "An application for development permission, to be valid, must be made either by or with the approval of a person who is able to assert sufficient legal estate or interest to enable him to carry out the proposed development, or so much of the proposed development as relates to the property in question".*
- 8.1.6. Section 34(13) of the Planning and Development Act 2000, as amended, further provides that, if the applicant lacks title or owner's consent to do works permitted by a planning permission, the permission does not give rise to an entitlement to carry out the development. This is supported by section 5.13 the Development Management Guidelines for Planning Authorities (June 2007), which states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, which are ultimately matters for resolution in the Courts.

8.1.7. In this case, the land subject to the 'undivided moiety' is indicated on the application plans and no proposed works are shown in this area. I note that the extent of the undivided moiety as shown on the plans is not in dispute. All of the proposed development works the subject of this planning application are contained within the land indicated to be fully within the ownership of the applicant. The proposed door in the northern elevation, serving the utility room, is in the original part of the dwelling. The submitted plans indicate that ground levels within the area of the undivided moiety would be retained as existing and no step is indicated from this door on the proposed plans. The submitted plans do not indicate any gate or barrier within the undivided moiety lands. On this basis, I am satisfied that the proposed development is located on lands within the control of the applicant and that the applicants have provided sufficient evidence of their legal intent to make an application. Any further legal dispute is considered a Civil matter and is outside the scope of the planning appeal. In any case, 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. Overall therefore, I do not consider that the application is invalid or should be refused for reasons relating to legal interest.

8.2. **Procedural issues**

- 8.2.1. The grounds of appeal raise concern that there was an element of unfairness in the processing of the application by the local authority in that the unsolicited information submitted by the applicant was accepted by the planning authority but that submissions in relation to that information by the appellants were not accepted.
- 8.2.2. The applicant, in their response to this issue, states that planning authorities routinely accept Unsolicited Information during the processing of an application and that the acceptance of such information and timescales for doing so is at the discretion of the local authority.
- 8.2.3. I note the concerns raised by the appellant. The Coimisiún is responsible for the determination of planning appeals made to it under section 37 of the Planning and Development Act 2000, as amended. Matters relating to the processing of the application by the planning authority fall outside this scope. However, the Coimisiún is required to consider the application on a de novo basis, taking into account all of

the information on the application file and submitted to it as part of the appeal, including the appellants' grounds of appeal. The unsolicited information submitted by the applicant was accepted by the planning authority and forms part of the application file. I have reviewed all of the information on the file, including the submission made by the appellants to the planning authority at application stage and their grounds of appeal. The substantive issues raised have been considered. In relation to the issue raised regarding the planning authority's handling of unsolicited information, this is a procedural matter for the local authority and falls outside the scope of the Coimisiún's functions.

8.3. Other issues - conditions

- 8.3.1. Condition 3 of the planning authority's decision required an asbestos survey and a waste management and disposal plan. Asbestos is a notifiable substance, the subject of a separate legal code, and therefore I do not consider that a condition in this regard is necessary. Given the limited extent of demolition, consisting of the existing rear extension to the dwelling, I do not consider that a waste management and disposal plan is warranted.

9.0 AA Screening

- 9.1. 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 Dingle Peninsula SPA (004153), Mount Brandon SAC (000375) or any other European Site, in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.
- 9.2. 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 location of the site within an existing built-up area, with service connections available.

- The qualifying interests and Dingle Peninsula SPA (004153) and Mount Brandon SAC (000375).
- Taking into account the screening determination of the planning authority.

10.0 Water Framework Directive

- 10.1. An assessment of the proposed development has been undertaken with regard to the objectives set out in Article 4 of the EU Water Framework Directive.
- 10.2. Having considered the nature, scale, and location of the proposed development, it is concluded that the proposal will not result in any risk of deterioration in the status of any water body, including surface waters (rivers and lakes), groundwater, transitional waters, or coastal waters. This applies to both qualitative and quantitative status, and in respect of temporary and permanent effects. In addition, the proposed development will not adversely affect the achievement of established environmental objectives, including the protection, maintenance, and improvement of water body status, as required under the Directive.
- 10.3. Accordingly, the proposed development is considered to be compliant with the requirements of Article 4.

11.0 Recommendation

- 11.1. I recommend that permission is granted.

12.0 Reasons and Considerations

Having regard to the 'R2 – Existing Residential' zoning objective for the site to "Provide for residential development and protect and improve residential amenity", to the pattern of development in the area, to the siting, scale and design of the proposed development, and the objectives of the Kerry County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would not be prejudicial to the environment or biodiversity and would be acceptable in terms of traffic safety and convenience. The

proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The 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 development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements, in writing where necessary, of the planning authority for such works and services.

Reason: In the interest of public health.

3. Site development and building works shall be carried out between the hours of 07:00 to 19:00 Mondays to Fridays inclusive, between 08:00 to 14:00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

4. All necessary measures shall be taken by the developer to:
 - a. prevent any mud, dirt, debris or building material being carried onto or placed on the public road or adjoining properties as a result of the site construction works;
 - b. repair any damage to the public road arising from carrying out the works;

Reason: In the interest of traffic safety and orderly development.

5. 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 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 Coimisiún Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.”

Suzanne White
Planning Inspector

4th August 2026

Appendix 1: Form 1 EIA Pre-Screening

Case Reference	PL-501308-KY-26
Proposed Development Summary	(A) Renovate existing single-storey dwelling house with minor elevational changes (B) to raise the roof level (height) of the single-storey dwelling house to convert the attic space into living accommodation with rooflights to the front elevation (C) demolish existing rear extension and shed (D) to extend the dwelling to the rear and for permission for all associated site works.
Development Address	Emlagh West, Cooleen, Dingle, 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?	☒ Yes, it is a 'Project'. Proceed to Q.2.
	☐ No, No further action required.
(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)	
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	

☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ 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?	
☒ 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.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ 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 ☐	
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: Suzanne White **Date:** 04/08/2026