



An
Bord
Pleanála

Inspector's Report ABP-319776-24

Development

Retention for extension.

Location

Kilconly, Ballybunion, Co. Kerry, V31 F685

Planning Authority Ref.

2360127

Applicant(s)

Michael Martin

Type of Application

Retention

PA Decision

Refuse

Type of Appeal

Third Party

Appellant

Martin Flynn & Michael
Flynn

Observer(s)

None

Date of Site Inspection

09/10/2024

Inspector

Lorraine Dockery

1. Site Location/ and Description. The subject site, which has a stated area of 0.104 hectares is located in the townland of Kilconly, approximately 4km north of Ballybunion, Co. Kerry. The site currently contains a detached part single storey/part dormer dwelling. This is a rural, coastal area.

2. Proposed Development. Retention of dormer extension. Original dwelling has stated area of 95m² while proposed extension for retention has stated area of 88m². Maximum height of works to be retained stated as being 5.883m. Proposed

wastewater management is stated to be by an existing connection to conventional septic tank system.

3. PA's Decision- Retention permission REFUSED for 1 reason as follows:

The Planning Authority is not satisfied on the basis of the submissions made in relation to the application, that the effluent arising from the proposed development could be adequately disposed of on site and would, be prejudicial to public health. The proposed development would, therefore be, contrary to the proper planning and development of the area.

Further Information was requested by the planning authority in relation to (i) clarification regarding site boundaries (ii) details including certificate from suitably qualified person confirming that the effluent treatment system installed on site has been appropriately installed (iii) accuracy of drawings

Clarification of Further Information was requested by the planning authority in relation to (i) design of proposed new wastewater treatment system and (ii) clarification relating to site boundaries.

Internal Reports

Environment Section (Site Assessment Unit)- Refusal recommended (dated 26/04/2024)

Prescribed Bodies

None

4. Planning History.

None

5.1. National/Regional/Local Planning Policy

- Kerry County Development Plan 2022-2028 applies
- Site is located within a 'Rural Area under Urban Influence'
- Site appears to be located within a 'Visually Sensitive Area' with Protected Views and Prospects within the vicinity

5.2 Natural Heritage Designations

- Lower River Shannon SAC (Site Code: 002165), approximately 1km west of the proposed development.

6. The Appeal

6.1 Third Party Appeal. Grounds:

- Contends that there should be more than 1 reason for refusal
- Impacts on visual amenity- seaward side of public road, would impede protected views and prospects; would adversely impact on landscape character; would not integrate into sensitive landscape; obtrusiveness
- Precedent of refusals in area; setting of precedent if permitted
- Impacts on residential amenity- impacts on privacy; overlooking; infringe existing building line; size, design and scale of proposed extension
- Other Matters-boundary issues; inaccuracies in submitted drawings; ownership of site; second home

6.2 P.A. Response

- None

6.3 Further Responses

- None

6.4 Observations

- None

7. EIA Screening:

See completed Form 1 on file. The proposal seeks to retain works undertaken without the benefit of planning permission. The PA therefore assessed whether a hypothetical planning application for the “development concerned” submitted in advance of works being undertaken would have triggered a requirement to carry out an EIA or a determination as to whether an EIA would have been required. If these requirements would have been triggered, then the application could not be considered by the PA. In order to decide whether the PA were prohibited from considering the application as per section 34(12) of the Planning and Development Act, 2000 as amended, the PA undertook a notional Preliminary EIA screening examination. The PA considered that the retention elements of the

application relate to minor development works, from an environmental assessment viewpoint. They further considered that there was no realistic pathway for impact or possibility that the proposal would have significantly affected the environment. The nature, scale and location of the works is such that potential for cumulative and in combination effects with other plans and projects can also be ruled out with certainty. The PA conclude that EIA or EIA Screening (a determination as to whether an EIA would have been required) would not have been required for the development concerned. I have had regard to this report of the PA (dated 04/09/2023).

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

8. AA Screening:

I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.

The proposal seeks to retain works undertaken without the benefit of planning permission. In order to decide whether the PA were prohibited from considering the application as per section 34(12) of the Planning and Development Act, 2000 as amended, the PA undertook a notional AA exercise. The PA therefore assessed whether a hypothetical planning application for the “development concerned” submitted in advance of works being undertaken would have triggered a requirement to carry out an Appropriate Assessment. The PA considered that the retention elements of the application relate to minor development works, from an environmental assessment viewpoint. The works were located outside of and physically removed from European Sites. The PA considered that there was no realistic or meaningful pathway for impact to any European Site. The nature, scale and location of the works s such that potential for cumulative and in combination effects with other plans and projects can be ruled out with certainty. They further state that there is no realistic pathway for impact or possibility that the proposal could have significantly affected a European Natura 2000 site and

AA would not have been required for the development concerned. I have had regard to this report of the PA (dated 04/09/2023).

The subject site is not located within or adjacent to any European Site. The closest European Site, part of the Natura 2000 Network, is the Lower River Shannon SAC (Site Code: 002165), approximately 1km west of the proposed development.

The proposed development is located within a rural area on a site which is residential in nature and comprises the retention of a small-scale domestic extension and associated site works on a serviced site. There are no meaningful pathways for impacts to any European Site and no realistic possibility that the proposal would have significantly affected European Sites.

Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- Small scale and domestic nature of the development
- The location of the development, distance from European Sites, together with absence of ecological pathways to any European Site.
- The report of the planning authority

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

9.0 Assessment

- 9.1 I have read all the documentation attached to this file including the appeal submission, the reports of the Planning Authority, in addition to having visited the site.

- 9.2 The planning authority refused permission for one reason as they were not satisfied on the basis of the submissions made in relation to the application, that the effluent arising from the proposed development could be adequately disposed of on-site and therefore considered the proposal to be prejudicial to public health. The planning authority gave opportunity to the first party to address this matter by means of a request for FI and CFI and they did not respond adequately in the opinion of the planning authority to either request. The submitted Site Characterisation Form states that a Tertiary Treatment System and Infiltration/Treatment Area (Section 4.0 Conclusions) would be suitable for this site with a septic tank and percolation area identified as being not suitable. The application states that the proposed wastewater management is through an existing connection to conventional septic tank system. The applicant was requested to submit details including certificate from a suitably qualified person, with professional indemnity insurance, confirming that the effluent treatment system on site has been appropriately installed. This certificate does not appear to have been submitted and there is no commentary on file from the applicant in relation to this matter.
- 9.3 On the basis of the information before me I consider that this reason for refusal should be upheld, as I too have concerns in this regard. Here is a lack of information on file in relation to this matter. It has not been adequately demonstrated that the effluent arising from the proposed development could be adequately disposed of on-site and in the absence of such information, the proposal must be considered to be prejudicial to public health. This is especially pertinent given the sensitive, rural coastal location of the site.
- 9.4 I note the grounds of the third-party appeal. The main issues raised in the appeal submission relates to the opinion that the proposal should have been refused on other grounds including
- impacts of the proposed development on the visual and residential amenity of the area including concerns with regards to setting of precedent and
 - other matters.
- 9.5 I highlight to the Board that one of the main issues raised in the appeal submission relates to boundary and ownership concerns in that the appellant contends that the boundaries of the site are incorrectly demarcated and the proposal infringes onto

third party lands. It is also contended that the applicant is not the owner of the site, as has been stated in the application documentation. I note that the application form states that the applicant is the owner of the site. The appellant has submitted a Tailte Eireann Special Registration Map to validate his claims that the extension has been constructed outside of the site boundaries. While I note that this document shows the footprint of a building outside the boundary line, that footprint is much larger than that constructed on site. The positioning of the western (rear) block wall as per the submitted Site Layout Plan does not appear to correlate exactly as to that constructed on the ground in terms of positioning (see Google maps image)- I would concur with the appellant that there appears to be inaccuracies in the submitted drawings. The positioning of this western (rear) block wall appears to be constructed inside the actual boundary and for the most part, does not demarcate the actual boundary, as per the information provided in the CFI Site Layout Plan.

- 9.6 I highlight to the Board that the subject wall does not form part of this planning appeal- it is the retention of extension that is referenced solely in the public notices and application form. The applicant was given opportunity at FI and CFI stage to address this matter. Land ownership/land registry details were not submitted but the first party stated in their response to CFI that the boundaries of the site are outlined in red and are in full compliance with the Land Registry Folios KY40612F and KY2947, both of which are owned by the first party. The Site Location maps submitted with the FI and CFI response appear largely similar to that submitted at application stage. The site dimensions on the Site Layout Plan submitted with the original application differ from those outlined in those submitted at FI and CFI stages. I also note that there were errors in the plans/elevations submitted at application stage, which the planning authority dealt with by means of a request for FI.
- 9.7 In addition to the above, the applicant did not submit any details relating to land ownership. However, notwithstanding the concerns of the third party, I have no information before me to believe that the applicant does not have sufficient legal interest to make the application. He has stated in the application form that he is the owner of the land and I have no documentary evidence to believe otherwise.
- 9.8 These are all considered to be legal matters that would require addressing in any future application on the site to regularise the subject development. The Development Management Guidelines 2007 state that only where it is clear ... that

the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above.

9.9 I am of the opinion that these are a legal matter rather than a planning matter and I would question if this is the correct forum to solve the dispute. Without doubt, there appears to be discrepancies in the information provided and a lack of clarity provided in relation to the matters raised. Notwithstanding this, I refer the Board to section 5.13 of the Development Management Guidelines 2007, which acknowledge that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In addition, I also note section 34(13) of the Planning Act, which states that a person shall not be entitled solely by reason of a permission to carry out any development. However, as this is an application for retention, the works have already been carried out. The planning authority did not refuse permission on this ground. However, I acknowledge that there was already a substantive ground on which to refuse permission. The Board may wish to include it as a reason for refusal, if they are minded to refuse permission. I consider however the recommended reason for refusal below to be substantive in nature.

9.10 In terms of impacts of the proposal on the visual and residential amenities of the area, I note that the site appears to be located within a 'Visually Sensitive Area' with protected Views and Prospects within the vicinity. There was an existing modest dwelling on site and the proposal provides for a relatively small-scale extension to same. It is greater in height than that existing but given the overall scale and design I do not have issue with this. The planning authority did not raise concerns in this regard. In terms of visual amenity, they consider that there are no impacts envisaged- that the extension is modern and welcomed at this location. I would not disagree with this assertion. In terms of impacts on residential amenity, the planning authority state that minimal impact is envisaged as a privacy screen barrier is proposed to the rear in the terrace area at first floor level preventing overlooking/loss of privacy to adjoining property. It is unclear to which terrace they are referring, as there does not appear to be any such terrace demarcated on the submitted drawings. This is assumed to be an error.

- 9.11 Given the nature and scale of the proposal, I consider that the proposal would not negatively impact on the residential or visual amenity of the area and I am generally satisfied in this regard. I consider that any impacts on the visual or residential amenities of the area are not so great as to warrant a refusal of permission or alteration to the design proposed. The proposed extension integrates well with the existing dwelling and other properties in the vicinity. I have no information before me to believe the proposal would lead to the devaluation of nearby property. In terms of setting of precedent, I note that each application is assessed on its own merits.
- 9.12 The appellant contends that this is a second home for the applicant. Section 5.6 of the operative Development Plan deals with holiday/second homes. It is the policy for the Council that one-off holiday / second homes will not be permitted in rural areas and I note Objective KCDP 5-23 in this regard. I highlight to the Board that this is not an application for a new dwelling, it is an application for retention of an extension to an existing dwelling. The renovation or modification of existing structures in rural areas for residential use is emphasised in the operative County Development Plan. I am satisfied in this regard.
- 9.13 To conclude, having regard to the above, I am not satisfied that the proposed development is in accordance with the provisions of the operative Development Plan and is not in accordance with the proper planning and sustainable development of the area.

10. Recommendation

- 10.1 I recommend that the decision of the planning authority be UPHELD and that permission be REFUSED for the subject development.

11. Reasons & Considerations

The Board is not satisfied that, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site. The proposed development would,

therefore, be prejudicial to public health and would, therefore be, contrary to the proper planning and sustainable development of the area.

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.

Lorraine Dockery

Senior Planning Inspector

21st January 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319776-24		
Proposed Development Summary	Retention of extension		
Development Address	Kilconly, Ballybunion, Co. Kerry, V31 F685		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	x
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	x		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	x	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: Lorraine Dockery

Date: 21 January 2025