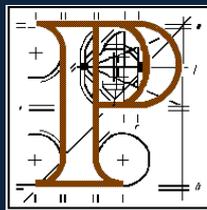


An Bord Pleanála



Inspector's Report

Site Address: Dromhale, Muckross Drive/Muckross Road, Killarney, Co. Kerry.

Proposal: Retention of basement and ground floor extension, complete extension to ground floor retail outlet, provision of staff canteen/changing rooms and all associated works.

Planning Application

Planning Authority: Kerry County Council

Planning Authority Reg. Ref.: 15/15

Applicants: Richard Leane

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellants: Tony O'Shea
Tom and Mary O'Donoghue

Type of Appeal: 3rd party –v- grant

Observers: None

Date of Site Inspection: 27th June 2015

Inspector: G. Ryan

1.0 SITE

- 1.1 The site is located to the south of the centre of the town of Killarney and to the eastern side of Flesk Road. Flesk Road forms part of the Muckross Road (N71) which is a major tourist route with many hotels, guesthouses and bed and breakfast facilities located along it. On either side of the subject site, there are residential houses with a petrol station and its associated shop along with a number of other guesthouses located across the road from the site. Muckross Drive is located to the south and southeast of the site. It is quite narrow and runs along the side of the building to the front of the current appeal site.
- 1.2 There is an existing building on the site and the area of the current appeal site comprises a small part of a larger overall landholding. The appeal site is currently occupied by a mixed use three storey building. There is a retail store at ground floor level and residential accommodation on the upper floors. The area subject to this appeal lies to the rear of this existing building which is accessed off the Muckross Drive estate road.
- 1.3 The rear of the site is currently occupied by abandoned building works, with a slab floor and rising block walls.

2.0 PROPOSAL

The scheme consists of works that can be summarised as follows.

- 2.1 Retention of basement and ground floor extension.
- 2.2 Completion of single storey extension to accommodate extension to ground floor retail outlet.
- 2.3 Provision of staff canteen/changing rooms and all associated works.

3.0 SUMMARY OF REPORTS TO THE PLANNING AUTHORITY

3.1 PLANNING OFFICERS REPORT

The issues raised in the planning officer's report can be summarised as follows. The report contains a number of photographs of the site.

- 3.1.1 While the zoning of the site is 'Existing Residential', there are several very large guesthouses and a filling station and shop in the vicinity, and within this zoning 'block'. To call this area residential is not a true reflection of this mixed use area.
- 3.1.2 It is not anticipated that the proposed development would have a significant negative impact on road safety.

- 3.1.3 An appropriate assessment screening report is attached which concludes that there is no potential for significant effects to Natura 2000 sites. The proposed development does not require an EIA (screening report also attached).
- 3.1.4 Notes the previous refusal by the board, wherein it was considered that the [single storey] development may be considered acceptable in principle, but that the reduction to this point by condition is not appropriate.
- 3.1.5 The design of the proposed extension is in keeping with existing buildings on the site and would not overlook the adjoining property to the north.
- 3.1.6 The location of the extension along the property boundary with the dwelling house to the north is considered acceptable in this urban area. There were structures along this boundary which were demolished to make way for the previously permitted development.
- 3.1.7 The proposed development successfully addresses the reasons for refusal as set out in the board's previous refusal.

3.2 DEPARTMENTAL REPORTS AND EXTERNAL CONSULTTEES

3.2.1 Chief Fire Officer

- 3.2.2 No objections subject to conditions.

3.2.3 National Roads Authority

- 3.2.4 Submission made stating that the NRA will rely on the planning authority to abide by official policy in relation to development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

3.3 REPRESENTATIONS

- 3.3.1 Objections were submitted on behalf of the current appellants. The matters raised in these objections are largely reflected in the appeal grounds summarised in section 6.1 below.
- 3.3.2 There are representations on file on behalf of the applicant from Donal Grady, Cllr.

4.0 PLANNING AUTHORITY DECISION

The planning authority decided to grant permission subject to 12 conditions, all of which could be considered 'standard' conditions, in my opinion.

5.0 HISTORY

5.1 MOST RECENT REFUSAL BY THE BOARD

PL63.243018 (planning authority ref 13/5392) – permission granted by the planning authority, but refused by the board for the retention and completion of extension and basement. This scheme was substantially similar to the subject scheme, but with 2 additional floors, with a 2 bed apartment at each level.

It is notable that the planning authority decision to grant included conditions to reduce the development to a single storey development by removing the upper 2 floors and associated apartments.

The board's refusal reason can be summarised as follows (my emphasis).

- a significant visual intrusion by reason of the proposed **height, scale and bulk** of the building and its proximity to adjacent residential properties.
- the layout and design of the proposed **apartments would be of a low standard** and would seriously injure the residential amenities of the future occupants of the proposed apartments.
- The development would seriously injure the existing residential amenities of adjacent properties particularly the house to the north, by reason of **overshadowing, overbearing and visual impact**, and would be unacceptable in terms of urban design quality.

The board direction - which was issued with the order - also included 2 notes, which can be summarised as follows (my emphasis).

Note1: The Board did not consider the approach of the Planning Authority, which was to grant permission but to **delete a significant proportion of the proposed development**, including the two apartments on first and second floor, by way of condition, to be appropriate.

Note 2: The Board considered that any application to regularise the existing development should be accompanied by **accurate and comprehensive drawings** showing the existing development and the adjoining buildings on neighbouring properties.

5.2 PARENT PERMISSION

PA Ref 07/4752: This is the 'parent permission' for the scheme. Permission was granted for a development comparable to that proposed under 13/592 above proposed save for a smaller basement floor area.

6.0 POLICY

6.1 KILLARNEY TOWN COUNCIL DEVELOPMENT PLAN 2009-2015

It would appear from the planning officer's report and from online resources that this is the currently applicable development plan.

The subject site is located within an area of the town which has been zoned as 'Existing Residential'. The objective within such areas is to provide and improve residential amenities.

7.0 GROUNDS OF APPEAL

7.1 TONY O'SHEA

- 7.1.1 This 3rd party appeal was submitted by McCutcheon Halley Walsh on behalf of the appellant, who has an address at Iona House, Muckcross Road, the house to the immediate north. The main grounds of this appeal can be summarised as follows.
- 7.1.2 Notes the previous refusal by the board under PL63.243018 (See section 5.1 above). The applicant has not adequately addressed the issues raised by the board.
- 7.1.3 The proposed development is still excessive in scale, overbearing, visually obtrusive, would cause overshadowing, result in devaluation, and endanger pedestrian and traffic safety.
- 7.1.4 The roof profile increases in height towards the appellant's property.
- 7.1.5 Shadow modelling images are presented by the appellant.
- 7.1.6 The drawings submitted are inaccurate and misrepresent the scale and nature of the proposed development. They state that the boundary wall on the northern side of the site is 3.8m above the finished floor level at present. This is incorrect as the blockwork is 2.475m above the finished floor level (11 courses of blocks).
- 7.1.7 If another 1.85m is added to the height of the existing block wall, the structure would be incongruous and overbearing. Photos are submitted which include sight poles and tape to indicate the proposed height of the wall.
- 7.1.8 The area to the rear of the appellants' property, which would be affected by overshadowing, is the primary amenity area for the house, as shown by photographs.
- 7.1.9 The proposed stormwater soakaway is insufficient.

7.2 TOM AND MARY O'DONOGHUE

- 7.2.1 This 3rd party appeal was submitted by Purtil Consulting Engineers on behalf of Tom and Mary O'Donoghue o Muckcross Drive, which is the road to the south and southeast of the subject site, a cul-de-sac off Muckross Road. The main grounds of this appeal can be summarised as follows.
- 7.2.2 Under the subject proposal, the storage area for the shop wold be around 43% of the overall area. Generally storage for shops is around 20-30% of the overall area. The applicant has not clarified why such a large storage area is required and why he now needs the basement for storage, which initially was not the case.
- 7.2.3 The applicant is only proposing 3 car parking spaces for the overall development, which is inadequate. Under the development plan, 8 spaces are required.
- 7.2.4 A road safety audit was carried out under a different planning application. A new audit should have been undertaken. Sightlines at Muckross Drive from the subject site are inadequate. There are no footpaths on Muckross Drive.
- 7.2.5 Drainage details are inadequate, for both stormwater and wastewater.
- 7.2.6 The submitted layout provides for the option of a 2nd shop within the floorplans, with access from the rear.

8.0 SUMMARY OF RESPONSES

8.1 PLANNING AUTHORITY

- 8.1.1 The planning authority have submitted a GIS printout of planning histories on the site, and for the surrounding areas.

8.2 FIRST PARTY RESPONSE TO THIRD PARTY APPEAL

- 8.2.1 A response submitted by Cunnane Stratton Reynolds on behalf of the applicant counters the grounds of the appeal. Issues of note raised in this submission can be summarised as follows.
- 8.2.2 On reviewing the drawings, there is one incorrectly referenced dimension on the drawings submitted with the planning application. Drawings 100c (south elevation) shows the dimensions of the under-construction northern elevation as being 3800mm above FFL. This should read 3200mm, with the proposed ridge height being 1090mm above the existing height of the boundary wall. The applicants refute the appellant's assertion that the exiting boundary wall is 2475mm above FFL of the appeal site. Revised drawings to this effect are included.

- 8.2.3 Figure 1a shows the rear elevation of the main building on site, indicating the pre-existing height of the – now demolished – single storey element along with the proposed height of the proposed single storey extension. Figure 2b shows the previous ‘lean to’ structure prior to demolition.
- 8.2.4 The applicant has engaged IES Ltd/ to provide a professional Shadow and Daylight Analysis (Appendix A) which concludes that the proposed development is compliant with BRE Digest 209.
- 8.2.5 The proposed development will actually improve the visual outlook for the appellant as compared with the pre-existing structures on site.
- 8.2.6 The applicant provides a justification for the amount of storage and ‘non-net’ floor area proposed.

8.3 APPELLANTS’ RESPONSE TO 1ST PARTY RESPONSE

8.3.1 Tony O’Shea

- 8.3.2 Reiterates points made in the original appeal. In addition, the following points are of note.
- 8.3.3 Refers to previous legal proceedings between the parties.
- 8.3.4 Notes the applicant’s admission to previous inaccuracies in the submitted drawings. Asserts that the finished floor level of the extension is higher than the ground level on the appellants’ site, contrary to the revised drawings submitted by the applicant.
- 8.3.5 Photographs of the previous structures on site as viewed from the appellants’ site are included.
- 8.3.6 The shadow analysis submitted by the applicant does not include that there is not an adverse impact on the appellants’ property.

8.3.7 Tom and Mary O’Donoghue

- 8.3.8 Reiterates points made in the original appeal. In addition, the following points are of note.
- 8.3.9 The car parking to the front requires motorists to reverse onto the busy Muckross Road.

9.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Principle of Development
- Relationship to planning history
- Impact on residential amenity
- Car parking and traffic
- Screening for Appropriate Assessment

9.1 PRINCIPLE OF DEVELOPMENT

9.1.1 The subject site is located in an area which is zoned as existing residential in the current Killarney Town Development Plan, 2009-2015. The site, the subject of this appeal comprises a partially constructed structure to the rear of an existing mixed use building which occupies three floors, with commercial uses at ground floor and residential on the upper floors.

9.1.2 The subject site is located in an area which although is zoned as existing residential, comprises a number of commercial developments including a retail store, garage and shop and tourist accommodation in the form of hotels and B&Bs. The small existing residential estate located to the rear of the subject site, Muckcross Drive, also includes a number of large B&Bs. The objective within 'existing residential' areas is to provide and improve residential amenities. Chapter 12 of the Plan deals with Land Use Zoning Objectives and Development Management Standards. 'Local Convenience Shops' are a permitted use in this zoning objective.

9.1.3 The proposed development, being an extension to an existing local convenience shop, is consistent with the zoning objective, and is therefore acceptable in principle

9.2 RELATIONSHIP TO PLANNING HISTORY

9.2.1 While there is an obligation to consider this application 'de novo', it is worth briefly considering the proposed development in the context of the board's previous refusal (see section 5.1 above). I would characterise the board's decision and associated notes as comprising of 5 key points, against which I have assessed the proposal

Item	summary	My assessment
Refusal Reason Part A	Height, Scale, and Bulk	The scheme has been reduced from 3 stories to one story. Significant reduction in this regard.
Refusal Reason Part B	Low standard of apartments	Not applicable. No new apartments proposed.
Refusal Reason Part C	Overshadowing, overbearing, and visual impact	As per issue A above, significant reduction
Note 1	Methodology of addressing by condition	Not applicable. Direct proposal.
Note 2	Accuracy of drawings.	Addressed by way of 1 st party response to appeal. Neighbouring buildings now shown.

Table 1

9.2.2 In my opinion, the scheme has successfully addressed the board's previous reasons for refusal and associated notes.

9.3 IMPACT ON RESIDENTIAL AMENITY

9.3.1 The proposed development would present a long wall to the adjoining property to appellant's property to the north, along the common boundary. In terms of 'depth' into the site, the wall would be forward of the appellant's front building line and a short distance to the rear. This is a legacy of the relative setback of the original buildings on these adjacent sites.

9.3.2 It is clear that the proposed development would represent a deterioration to the appellant's residential amenity due to the view of the wall itself, as well as associated losses in sunlight and daylight due to the relative orientation of the sites. However, I do not consider that this impact is of such a magnitude as to warrant a refusal of permission. In balancing the competing interests of the parties, I note that the appellant has access to a large site, with gardens front and back.

9.4 CAR PARKING AND TRAFFIC

9.4.1 On-site parking to the rear would be on the low side, and the existing frontage parking is not ideal. Also, Muckross Drive is tight, and without footpaths. Nevertheless, given the relatively small size of the proposed extension, and the pre-existing nature of these issues, I do

not consider a refusal of permission would be warranted in this instance.

9.5 SCREENING FOR APPROPRIATE ASSESSMENT

9.5.1 The nearest Natura 2000 sites are the Killarney Park SPA and the Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC, both of which are located just 50m to the northwest, as these sites include the lands of Killarney House.

9.5.2 Having regard to the relatively minor nature of the case, the controlled nature of effluent handling that would be facilitated, and the proximity to the nearest European Site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 CONCLUSION AND RECOMMENDATION

Based on the above, I recommend that permission be granted subject to conditions comparable to those attached by the planning authority.

11.0 REASONS AND CONSIDERATIONS

Having regard to the provisions of the current development plan for the area, the nature of the proposed development, the established retail use on the site, and the mixed use nature of the wider area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be unduly injurious to the visual amenities of the area, the residential amenities of the area, or traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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. 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 Bord 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.

3. The proposed extensions at ground floor and basement level shall be used in conjunction with the existing retail use on site and shall not be leased, rented or sold separately from the existing retail units on site.

Reason: To ensure effective planning control of the development.

4. Any damage to the adjoining public footpath/roadway as a result of the proposed development shall be made good at the developer's expense to the satisfaction of the Planning Authority.

Reason: In the interests of orderly development and public safety.

5. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of environmental protection and public health.

6. Adequate space shall be provided within the curtilage of the proposed building (and not on the public footpath/roadway) for the collection and storage of waste and refuse generated in the proposed development.

Reason: In the interest of public health and orderly development.

7. No ancillary plant or equipment including satellite dishes shall be placed on the external walls or roofs without a prior grant of planning permission.

Reason: In the interest of architectural harmony and in order to integrate the structure into the surrounding area.

8. All excavations and building works shall be carried out between the hours of 0800 and 1800 Monday to Friday inclusive, and between the hours of 0800 and 1300 on Saturdays only. No work shall be carried out on Sundays or Bank Holidays.

Reason: In the interest of residential amenity.

9. All works adjacent to or on the Public road shall require a road opening licence approved by the Town Engineer. The approval of this licence will be subject to the developer / contractor possessing the adequate level of insurance which indemnifies Kerry County Council.

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

G. Ryan
Planning Inspector
10th July 2015