



An
Bord
Pleanála

Board Order ABP-318330-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 23/60073

Appeal by Skelligs Retreat Limited care of DMA Architects of Room 8, Collis Sandes House, Oakpark, Tralee, County Kerry against the decision made on the 28th day of September, 2023 by Kerry County Council to refuse permission.

Proposed Development: Material change of use of the existing building from sailing school, café and accommodation to three number town houses, series of material alterations to the elevations and floor layouts, installation of a tricell wastewater pumped unit and a sandcel tertiary treatment system and all associated site works, all at Donnybrook, Lower Tinnies, Valentia Island, County Kerry.

Decision

GRANT permission for the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the policies and objectives of the Kerry County Development Plan 2022-2028, the planning history of the site which permitted a tourist/recreational use at this location under planning register reference number 03/2422, the nature of the unfinished vacant and derelict superstructure thereon, including proposed use, the design of the proposed remodelling, the proposed installation of a new wastewater treatment system, the proposed planting and landscaping, adequate access and egress, and the surrounding pattern of existing and permitted development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not give rise to unacceptable impacts on visual amenity or residential amenity in the area, would not result in the creation of a traffic hazard, and would not set a negative precedent for other development in the area. The proposed development would be in accordance with Objectives KCDP 10-29, KCDP 10-30 and KCDP 10-34 of the Kerry County Development Plan 2022-2028 relating to the location of tourist accommodation and reuse of existing buildings, would be in keeping with the existing and permitted pattern of development in the area, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board agreed with the planning authority that the proposed development materially contravened Objective KCDP 5-23 of the Kerry County Development Plan 2022-2028. However, the Board also considered that this objective conflicted with Objective KCDP 10-29, Objective KCDP 10-30 and Objective KCDP 10-34 insofar as the proposed development is concerned. The Board, therefore, decided to grant permission pursuant to section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

Conditions

1. 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.

Reason: In the interest of clarity.

2. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, as amended, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to tourist accommodation (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of orderly development and residential amenity.

3. The entire site including the proposed units shall:
 - (a) be used for short-term tourist accommodation only, and shall not be used as a place of permanent residence, holiday home or second home,
 - (b) not be subdivided or amalgamated without a separate grant of planning permission, and
 - (c) remain under one single ownership and management.

Reason: To limit the nature of the development to that sought, in the interest of clarity.

4. The landscaping scheme shown on drawing number PP-003 received by An Bord Pleanála on the 25th day of October, 2023 shall be carried out in the first planting season following commencement of development. All planting shall be adequately protected from damage until established. Any plants (existing or proposed) which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the planning authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- (b) The percolation area shall be sized to be in accordance with the Environmental Protection Agency Code of Practice for Domestic Wastewater Treatment Systems 2021. The site layout plan, site section and all relevant and necessary documentation shall be revised and submitted to, and agreed in writing with, the planning authority prior to commencement of development.

- (c) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (d) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first operation of the facility and, thereafter, shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (e) Surface water soakways shall be located such that the drainage from the proposed development and paved areas of the site shall be diverted away from the location of the polishing filter.
- (f) Within three months of the first operation of the facility, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the wastewater treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.

Reason: In the interest of public health.

- 6. The water supply to serve the proposed development shall be taken from the Uisce Éireann public water mains to the local road which runs past the site. The developer shall enter into water connection agreements with Uisce Éireann prior to commencement of development.

Reason: In the interest of orderly development.

7. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

Reason: In the interest of traffic safety and to prevent pollution.

8. All service cables associated with the proposed development shall be located underground throughout the site.

Reason: In the interest of orderly development and the visual amenities of the area.

9. Any external lighting shall be properly cowled and directed away from the public roadway.

Reason: In the interests of traffic safety and to control light pollution in the rural environment.

10. No advertisement or advertisement structure shall be erected or displayed on the proposed development or its appendages or within the curtilage of the site without a prior grant of planning permission.

Reason: In the interest of the visual amenities of the area.

11. Prior to commencement of development, details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of orderly development and in the interest of visual amenity.

12. 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.



Tom Rabbette

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 9 day of July 2024