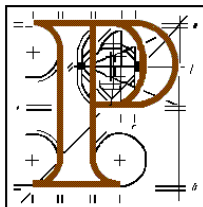


# An Bord Pleanála



## Inspector's Report

**Site Address:** Spunkane, Waterville, Co. Kerry.

**Proposal:** Construction of a house and all ancillary site development works within the curtilage of a protected structure.

### Planning Application

Planning Authority: Kerry County Council

Planning Authority Reg. Ref.: 15/92

Applicants: Liam Davis

Type of Application: Permission

Planning Authority Decision: Grant

### Planning Appeal

Appellant: Fiachra O'Driscoll and Others

Type of Appeal: 3<sup>rd</sup> party –v- grant

Observers: An Taisce

Date of Site Inspection: 10<sup>th</sup> October 2015

**Inspector:** G. Ryan

## **1.0 INTRODUCTION**

- 1.1 This is an application for construction of a house on lands that are asserted to be part of the open space of an apartment scheme in an adjacent converted period building. The appellants are the residents of that scheme. This issue forms the crux of the appeal, along with the impact of the proposed development on the setting of a protected structure (the apartment building) along with a number of other less central issues that are discussed in the course of this report.

## **2.0 SITE**

- 2.1 The site has a stated area of 700m<sup>2</sup>, and is located in the town/village of Waterville, in southwest Kerry. The site consists of a lawn adjacent to a two-storey stone faced building that was constructed as part of the cable station in Waterville at the start of the last century and is now used as apartments.
- 2.2 There is no access to the public road to the site apart from that which serves the apartments in the Old Cable House. There are two pairs of semi-detached dwellings to the east of the site and three pairs across the road to the north, all of which appear to date from the same period as the Old Cable House and are of a similar architectural character. There are other modern houses on the same access road. That road is c.4m wide. It lacks footpaths and the public lighting along it is minimal. There is no commercial development in the immediate vicinity. A recent development of bungalows abuts the back wall of the site.

## **3.0 PROPOSAL**

- 3.1 The scheme consists of the construction of a 2-storey 4-bedroom house with a stated area of 239.7m<sup>2</sup>.

### **3.2 ARCHITECT REPORT**

- 3.2.1 The report states that the remaining open grassed area to the front of the site is proposed to remain as open space, as identified on the site layout.
- 3.2.2 The roof angles of the proposed building would have a similar pitch to the Old Cable House.
- 3.2.3 The house has been set back into the south-eastern corner of the site, to increase distances to the Old Cable House.
- 3.2.4 Notes amendments made to the proposed development following a pre planning meeting, and discussions with the Heritage Officer.

### **3.3 FURTHER INFORMATION REQUEST AND RESPONSE**

3.3.1 Prior to issuing a decision, the planning authority sought further information on 4 points, which can be summarised as follows, along with the response from the applicant.

<b>Planning authority request</b>	<b>Applicant's response</b>
1. Requests cross sections.	Drawings submitted
2. Requests details of proposed planting/screening.	Drawings submitted
3. Requests the submission of an architectural heritage impact assessment.	AHIA submitted (see below)
4. Asks to have regard to the 3 <sup>rd</sup> party submissions, and to submit response to same, where relevant.	Asserts that the AHIA addresses the 3 <sup>rd</sup> party concerns.

**Table 1**

#### **3.3.2 Architectural Heritage Impact Assessment**

3.3.3 An AHIA was prepared by Alison McQueen and Associates on behalf of the applicant. Some points of note are as follows: -

3.3.4 A photo on page iii provides an enlightening view of the Cable Station Complex in 1900. The Old Cable station is visible to the left, with a reddish tint. A series of additional photos in Section 3 of the report are also useful, as are historic maps from 1842, 1890s, 1895/96, and 1912, which show the historical development of the complex. Figure 7 at the rear of the report provides a composite image showing the dates of construction of the houses in the vicinity.

3.3.5 Section 1.4.1 of the report refers to a level of confusion around the RPS due to there being 2 former cable houses in close proximity. Iveragh Lodge (north of the subject site) was bought by the cable company in 1884 and served as the cable office until 1899. The 'new' Cable station to the west of the subject site was purpose built in 1899, after which Iveragh Lodge served as the superintendent's house.

3.3.6 Section 3 of the report provides an in depth historical background to the Cable Station complex.

3.3.7 Section 7 of the report covers Impact Assessment and Recommendations. It concludes that the proposed development would have a 'slight negative visual impact' upon the Cable Station apartment building. Figure 8, at the rear of the report, traces out the views to and from the Old Cable House.

## **4.0 SUMMARY OF REPORTS TO THE PLANNING AUTHORITY**

### **4.1 DEPARTMENTAL REPORTS AND EXTERNAL CONSULTEES**

#### **4.1.1 National Roads Authority**

4.1.2 'Generic' submission stating the NRA will rely on the planning authority to abide by official policy.

#### **4.1.3 Irish Water**

4.1.4 No objection.

#### **4.1.5 Executive Planner (Conservation)**

4.1.6 An initial report recommends requesting an architectural heritage impact assessment by way of further information.

4.1.7 Following the receipt of the AHIA, the author states no objection to the proposed development, referring to the architectural features and how they relate to the Old Cable House.

#### **4.1.8 An Taisce**

4.1.9 Made a submission stating that they did not receive notification and states that they would welcome the opportunity to express their concerns.

### **4.2 REPRESENTATIONS**

4.2.1 Objections were submitted on behalf of the current appellant. The matters raised in these objections are largely reflected in the appeal grounds summarised in section 8.0 below.

### **4.3 PLANNING OFFICER'S REPORTS**

4.3.1 The initial contribution from the planning officer does not amount to a report as such, but rather a draft of the request for further information. There are also photographs of the site attached [note, the site is not fenced off in these photos].

#### **4.3.2 Planning officer's substantive report**

4.3.3 Following the receipt of further information, the planning officer's report makes the following points of note.

4.3.4 States that the site is zoned mixed use, and quotes the objective from the plan.

4.3.5 Visual impact is not an issue, as this is an urban site and the proposed dwelling is set back in order not to interfere with the character of the neighbouring protected structure.

- 4.3.6 Traffic is not an issue, as there is an existing vehicular entrance.
- 4.3.7 Residential amenity is not an issue, as all windows at first floor level to the east are to be fitted with permanently frosted/opaque glass.
- 4.3.8 'Screens out' for EIA and AA.
- 4.3.9 Recommends a grant of permission.

## **5.0 PLANNING AUTHORITY DECISION**

The planning authority decided to grant permission subject to 11 conditions, many of which could be considered 'standard' conditions. Others of note can be summarised as follows.

- 1 Standard condition, but also includes a requirement that the first floor windows along the eastern elevation be fitted with permanent frosted/opaque glass.
- 2 Stipulates materials.
- 6 'De exempts' extensions.

## **6.0 HISTORY**

### **6.1 ON THE SUBJECT SITE**

**PA Ref. 98/1027** – The planning authority granted permission in 1998 for the change of use of the Old Cable House to the west of the site from a hostel to 10 apartments with a separate dwelling in the water tower. The following conditions were of note:

Condition no. 3 required the layout of the development shown on the site layout plan submitted on 13th August 1998 to be amended in various ways.

Condition no. 12 required a management company to take charge of common facilities in the development.

**PA Ref. 05/1218** – The planning authority refused permission to build 5 houses on the site for two reasons, which can be summarised as follows.

- 1. Over-development of the site with substandard residential development that would seriously injure the amenities and depreciate the value of property in the vicinity.
- 2. Would severely diminish the historical and architectural integrity of the Old Cable Station and nearby properties.

**PL08.235654 (PA Ref. 09/348)** – Permission refused by the board to the same applicant for 5 houses, an apartment and a commercial unit for 2 reasons, which can be summarised as follows

1. The proposed development would have a serious adverse impact on the available views of the eastern elevation of the Old Cable House (a protected structure of architectural and historical importance).
2. The proposed development would deprive the occupants of the apartments in the Old Cable House of an adequate amount of useable private open space and parking space, would seriously detract from the residential amenity of existing occupants of the Old Cable House

## **6.2 REFERRED TO IN THE APPAL**

**PL29S.243272 (PA Ref. 3023/13)** – Permission refused for retention alteration and extension of dwelling and construction of 4 no. houses at Walford, 24 Shrewsbury Road, Dublin 4.

**PL28.230339 (PA Ref. 08/33107)** – Permission refused for Demolition of building, construction of 44 no. apartments at Bishopstown, Cork.

## **7.0 POLICY**

### **7.1 CAHERSIVEEN, WATERVILLE & SNEEM FUNCTIONAL AREAS LOCAL AREA PLAN 2013 – 2019**

The site is zoned 'Mixed Use'. Which is described in full in Section 2.1.3 of the plan as follows (my emphasis)

*“Mixed use zoning is intended to cater for a mix of uses outside of the town centre including local shops, petrol stations, offices, visitor accommodation and other commercial uses that are acceptable outside the town centre. These sites shall be developed with a complementary mix of uses where possible. Development on such sites shall not detract from the vitality and viability of the town centre. Small scale retail uses are acceptable on these sites in the form of local neighbourhood shops with a gross floor area of not more than 500sqm. **Any residential development on these sites shall be secondary to the primary commercial/retail use. The site and any residential development shall be compatible with the primary use.**”*

Section 3a, paragraph 1.4 states that an additional 16 dwellings will be required in Waterville.

Objective H-7 is to ensure that 75% of all lands within Zone 2 shall be developed prior to any development occurring within Zone 1. The subject site is within the (inner) Zone 2.

The Old Cable Hose to the west of the subject site is one of 12 Protected Structures in the town, as indeed is the first Cable House to the north. (RPS Ref. Nos. 21309801 and 21309805 respectively)

## **8.0 GROUNDS OF APPEAL**

The 3<sup>rd</sup> party appeal was submitted by John McCarthy and Partners Consulting Engineers on behalf of the following residents of 'The Old Cable Station'.

- Fiachra and Rosemarie O'Driscoll
- Michael and Orla O'Mahony,
- Kevin and Margaret Smith
- Steve and Elsa Galvin
- John and Colette O'Flynn
- John Layden
- Grellan McGrath

The main grounds of this appeal can be summarised as follows.

### **8.1 CONFLICT WITH PARENT PERMISSION ('98 PERMISSION)**

- 8.1.1 Refers to Conditions 3 and 12 of the original permission under PA Ref. 98/1027 [see section 6.1 above]
- 8.1.2 Refers to the subsequent reasons for refusal under 05/128 and PL29S.243272 (PA Ref. 3023/13). Reason 1 of the former, referring to over-development, was reasonable then, and is still relevant.

### **8.2 LOSS OF OPEN SPACE**

- 8.2.1 Refers to the inspectors' report under PL29S.243272 where it states that *"..as a matter of fact, [that] the established use of the land which comprises the appeal site is private amenity space serving the apartments..."*
- 8.2.2 Notes the inspector's report where it states that the subject site is *"..the only substantial piece of private open space serving the apartments and house.... The rest of its curtilage is given over to parking and incidental pieces of open space..."*
- 8.2.3 The appellants do not have access to balconies and are instead reliant solely on the ground level open space, which would be reduced by 50%
- 8.2.4 A fence has in recent days [at the time of writing] been erected on site, designed to exclude any use of the site. The appellant asks the board to direct the applicant to remove this fence.
- 8.2.5 Refers to board decisions in relation to development in comparable situations (see Section 6.2 above), where development was

proposed on an area of open space in Bishopstown, Cork. The appeal quotes from the inspector's report.

### **8.3 INJURY TO PROTECTED STRUCTURE**

- 8.3.1 The proposed development would obscure the eastern elevation of the Old Cable House, which was designed as its principle elevation. The proposed development would injure the setting and character of this protected structure.
- 8.3.2 Notes Reason for refusal 2 of 05/128. This is still relevant. Notes the inspector's report under PL29S.243272 (PA Ref. 3023/13) regarding the impacts on the protected structure. This is still relevant.
- 8.3.3 Refers to the Architectural Heritage Impact Assessment, dated 22/5/15, prepared by Messrs Alison McQueen & Associates.
- 8.3.4 Refers to board decisions in relation to development in comparable situations (see Section 6.2 above).

### **8.4 OTHER ISSUES**

- 8.4.1 Refers to the Urban Design Manual, companion document to the Guidelines for Planning Authorities on Sustainable Residential Development and contends that the proposed development does not respond appropriately to its surroundings, as per the manual's recommendations.
- 8.4.2 There are currently many properties for sale in the area. As such, there is no demand for the proposed development. The Local Area Plan 2013-2019 requires just 16 additional houses in the town, and that they be for permanent occupancy only. The appellants ask the board to undertake research to establish how many permitted developments there have been since the adoption of the LAP.
- 8.4.3 The appellants understand that the applicant owns or has significant interest or control over 3 apartments in the complex. This should have been evident in the information submitted to the planning authority, in line with Article 23 of the Planning Regulations.
- 8.4.4 The proposed access arrangements would disturb and alter the existing car parking regime.
- 8.4.5 The proposed development would reduce the value of adjoining properties. This is a valid planning consideration. Refers to the High Court Case of Maher –v- An Bord Pleanála.
- 8.4.6 The proposed development would be contrary to the 'Mixed Use' zoning objective, which requires that any residential development be secondary to the primary commercial/retail use. This was ignored by the planning officer.



8.4.7 Notes that the site is for sale<sup>1</sup>. Includes a photo of a sign on the site.

## **9.0 SUMMARY OF RESPONSES**

### **9.1 PLANNING AUTHORITY**

9.1.1 The planning authority has not responded to the matters raised in the appeal. They did however submit details of planning histories in the vicinity in written and mapped form.

### **9.2 FIRST PARTY RESPONSE TO THIRD PARTY APPEAL**

9.2.1 A response submitted by McCutcheon Halley Walsh on behalf of the applicant counters the grounds of the appeal. The main points can be summarised as follows.

#### **9.2.2 Background**

9.2.3 The applicant bought the entire site, and including the Cable Station with apartments already developed. The apartments were sold individually in the years that followed. Prior to purchasing their apartments, the appellants made enquiries regarding the subject site, and were informed that it was the applicant's intention to develop in the future. The subject site was not included in the parent application 98/1027. Open space was to be to the west of the Cable Station.

9.2.4 While the subject site remained outside the Cable Station complex and was private property, the applicant allowed the space to be used by the apartment owners in the interim. The applicant paid for the maintenance and upkeep of the site, and the appellants invoiced the applicant on a quarterly basis for cutting the grass.

#### **9.2.5 The site as open space**

9.2.6 The appellants are seeking to exploit the good-will shown by the applicant and are presenting the proposal as development on lands which were designated as open space in the parent permission.

9.2.7 The refusal of permission under 05/1218 did not relate to the amenity space associated with the Old Cable house.

9.2.8 While the board's previous decision under PL08.235654 gives some credence to this argument, it does not prohibit future development of the site.

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<sup>1</sup> At the time of writing this report, the site was advertised for sale online as "*Site with full Planning Permission located at the Cable Station, Waterville*", with site plans and layouts. showing the subject application. <http://www.myhome.ie/residential/brochure/ref-643-site-with-full-p-p-the-cable-station-waterville-kerry/3383338>

## **9.2.9 Impact on protected structure**

9.2.10 Refers to the AHIA report submitted by way of further information. Asserts that the proposed development would not have a negative impact on the protected structure.

## **9.2.11 Other issues**

9.2.12 The response asserts that the precedents in Cork and Dublin cited by the appellants are not relevant.

9.2.13 The response provides a rebuttal to other issues under the headings of validation of the application, demand for holiday homes in Waterville, Impact on Property Values, and Compliance with Planning Policy.

## **10.0 OBSERVERS**

One observation has been submitted from An Taisce. The main issues raised in this observation can be summarised as follows.

10.1.1 Notes the site's location adjacent to a protected structure, which is of great importance not only for its architectural character, but also because of the role it played in the historic development of the town.

10.1.2 The proposed development would reduce the visibility of the main façade of the protected structure, would intrude into its curtilage, and injure the residential amenities of the area. It would disrupt the symmetry of the overall plan for the complex, and would not fit in with the existing row of historic dwellinghouses to the east.

## **11.0 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
- Potential loss of Open Space for the apartments
- Impact on protected structure
- Impact on parking
- Site development standards
- Impact on residential amenity
- Screening for appropriate assessment

## **11.1 PRINCIPLE OF DEVELOPMENT**

- 11.1.1 The issue of zoning is problematic in the first instance. As pointed out by the appellants, the zoning objective in the LAP requires that *“Any residential development on these sites shall be secondary to the primary commercial/retail use.”* The direct interpretation of this objective is that a residential proposal, as is currently the case, would not be permissible in the absence of a more significant quantum of commercial/retail use.
- 11.1.2 This interpretation would however, in my opinion, be a bizarre and unintended consequence of the policies of the LAP. The site is located with residential uses on all sides. I cannot conceive of any valid planning reasons that the LAP would intentionally and specifically exclude residential development in this context.
- 11.1.3 Looking at areas of ‘Mixed Use’ zoning elsewhere in the town, the town centre itself is the largest such zone. It would be reasonable to ensure the primacy of commercial/retail use in this core area. There are other outlying sites with this zoning, all of which seem to be reflecting the ‘facts on the ground’ use of the sites rather than any strategic objectives. These sites are restaurants, pubs, B&Bs, a craft centre that are located outside the town centre, but within the development boundary.
- 11.1.4 The only conceivable explanation for the zoning of the subject site, which also includes the Cable Station site to the west, is that it is perhaps reflective of the Cable Station’s former use as a hostel (prior to the ’98 permission). This is however, merely conjecture.
- 11.1.5 I note that the planning officer did not provide any assessment of the zoning issue.
- 11.1.6 On balance, and considering the breadth of policies within the LAP, I could not in good faith stand over a recommendation to refuse permission based on a narrow interpretation of the zoning objective that would prohibit residential development in this instance. As such, I consider the proposed development to be acceptable in principle.

## **11.2 POTENTIAL LOSS OF OPEN SPACE FOR THE APARTMENTS**

- 11.2.1 Two very different scenarios are presented by the applicant and the appellant on this issue. It is worth characterising both of these scenarios in outline form, and to present a conjectural assessment of each.

### **11.2.2 The site as open space inherently linked to the Cable Station apartments**

- 11.2.3 This is the scenario as presented by the appellants, who assert that this site is effectively part of the open space which they enjoy as part of their residence of the Cable Station building. They rely heavily on the inspector's report under PL08.235654 on this issue.
- 11.2.4 Were this to be the case, I would consider the proposed development to warrant a clear refusal of permission. It would simply not be acceptable for a developer to develop an apartment scheme on the basis of a certain quantum of open space, construct and sell off the apartments, retain the open space, and then sell on or subsequently develop that open space for further housing. This would be an injustice to both the residents of the initial scheme, and the wider community by way of the planning system.

### **11.2.5 The site as an independent plot, without inherent links to the Cable Station apartments**

- 11.2.6 This is the scenario as presented by the applicant, who asserts that the subject site was never part of the '98 permission, and that the applicants have been permitted to use the site only on an interim basis, and as a good will gesture.
- 11.2.7 Were this to be the case, I would consider that there would be no impediment to considering the application further.

### **11.2.8 Evidence on this issue**

- 11.2.9 I note that the inspector's report under the previous case – PL08.235654 – considers that it's *'arguable'* whether the appeal site was part of the site under 98/1027, and states that the *'boundary lines do not appear to include land that is the current appeal site'*, but that the site layout plan does state that the area would be landscaped. The inspector argues that it could reasonably be assumed that the landscaping was to provide an amenity for the proposed apartments. The inspector sets aside the resolution of this argument as not being of any great relevance, relying instead on the fact that the *'established use of the land which comprises the appeal site is private amenity space serving the apartments..'*
- 11.2.10 The fact that the site is currently – or at least up until very recently – in use as 'de facto' amenity space associated with the apartments is not disputed by the parties. However, the question arises as to the extent to which this should inhibit the applicant's development rights. To determine this matter, I consider it necessary to revisit the issue set aside by the inspector under 98/1027, namely whether the subject site was identified as open space associated with the apartments under the parent permission.

- 11.2.11 I have viewed the drawings available in respect of 98/1027 – which are available on the board’s history file under PL08.235654 - I concur with the previous inspector that there is a level of ambiguity. There is no site layout plan showing a ‘red line’ and possible ‘blue line’ that would distinguish the application site from the extent of the applicant’s property ownership.
- 11.2.12 However, some clarity can be gleaned from the planning application form under 98/1027, which states that the site area is 0.268ha. I have measured the area of the Cable Station site, the open space on which the proposed development is situated, and the combined site, and found them to be 0.26ha, 0.13ha, and 4.11ha respectively. As such, it is clearly the case that the application site under 98/1027 excluded the subject site. Furthermore, I note that the further information request issued by the planning authority under 98/1027 states that

*“There is disparity between the boundaries of the 1:2500 and the 1:400 site layout plans and the latter excludes part of the roadway, car parking area, and landscaped open space area to the east, as stated (0.26ha/ 0.662acres) is shown outlined in red and hatched thereon. Kindly clarify and submit revised site and layout plan accordingly to ensure that the boundaries concur with one another.*

The response from the applicant states *“disparity of location and site map amended”*. Not only does this corroborate the evidence in the application form that the site was the 0.26ha site, but it also confirms that this was the ‘red line’ site, and that the planning authority were explicitly aware of this fact.

### **11.2.13 Conclusion on this matter**

- 11.2.14 It is my opinion that the evidence strongly points towards a situation whereby the subject site was not part of the application site under the '98 permission, and as such, could not have been accounted for as open space associated with the apartment development. As such, the latter of the 2 scenarios outlined above (11.2.5 above) applies, and there is no impediment to considering the application further. While the applicants may have had the benefit of the use of this site for the past many years, this does not remove the applicant’s development rights, from a planning perspective.

### **11.2.15 Status of the area north of the subject site**

- 11.2.16 I note that in something of a repeat of history, the current application is ambiguous on the intended use of the portion of the area of proposed residential open space to the north of the proposed development. It is shown on the current plans as ‘Open Space’, but is not outlined in blue as being within the applicant’s ownership,

despite the entirety of the 0.13ha site being within the applicant's ownership in 2010 under PL08.235654.

- 11.2.17 Notwithstanding, my recommendation under 11.2.13 above, should the board wish to take an intermediary position between those presented by the parties to the appeal, it might be considered appropriate to ensure that this residual area be retained for use by the occupants of the apartments within the Cable House. A Section 47 agreement may be an appropriate mechanism to ensure this. However, I would stop short of recommending this approach in the absence of this area's explicit inclusion within lands under the applicant's control.
- 11.2.18 By way of informing this issue, I have calculated that on the basis of current LAP policy, a requirement for 330m<sup>2</sup> of open spaces arises by virtue of the apartments. There are no balconies, and the area to the west consists of intermittent and fragmented areas of incidental and poor quality open space, albeit that it most likely complies in a quantitative sense. The residential area to the north of the subject site, shown on the plans as 'Open Space' is in the order of 600-700m<sup>2</sup>.

### **11.3 IMPACT ON PROTECTED STRUCTURE**

- 11.3.1 I note that there is some confusion regarding the status of the Old Cable Station, given that there is an even older former Cable Station to the north, and an amount of ambiguity in the record of protected structures. Nevertheless, I see there to be no reason not to treat the proximate building with the care that would otherwise be afforded a protected structure in any event, given its historical significance, as set out in the submission on file.
- 11.3.2 I note that since the laying out of the Cable Station buildings from the 1890s, there has been much in the way of modern infill in and around Iveragh Terrace.
- 11.3.3 The current proposal is a very significant improvement on the previous application under PL08.235654 in terms of its massing and relationship to the Old Cable Station. There would be clear, uninterrupted views across from Iveragh Terrace to the Old Cable Station.
- 11.3.4 I would have some concerns regarding the extent to which boundary walls or planting to the front (north) of the proposed development would partially obscure the façade of the Old Cable Station, as per the further information submitted on this issue. If permission is to be granted, this could perhaps be restricted by way of condition.

#### **11.4 IMPACT ON PARKING**

- 11.4.1 I note that in the photographs on file, parking to the front (east) of the Old Cable House is arranged along the west of the internal access road in a 'herringbone' pattern. As such, the proposed new entrance on the east side of this road should not be an issue.

#### **11.5 SITE DEVELOPMENT STANDARDS**

- 11.5.1 This is a generously proportioned house, well laid out, with a good sized garden and off-street parking. I have no doubt but that it would provide a high standard of residential amenity, and see no need to subject it to detailed analysis against minimum standards in the development plan.

#### **11.6 IMPACT ON RESIDENTIAL AMENITY**

- 11.6.1 I note that Condition 1 of the planning authority's decision requires that frosted/opaque glass be fitted to the windows along the eastern elevation. This is an appropriate response to the potential for overlooking of the rear garden of the house to the east.
- 11.6.2 The separation distances between the west facing first floor windows of the proposed development and those of the Old Cable Station are in the order of 14m at the closest. While there is an offset in orientation, it would appear to be less than 30 degrees. Potential for overlooking would arise, in my opinion. I note that these windows are to circulation space, a dressing room, and 2 bedrooms. In the case of the bedrooms, I note that both also have windows on the north and south elevations. As such, I consider it to be a viable option to require that these windows be obscurely glazed as well.
- 11.6.3 I note that notwithstanding the site cross section submitted by way of further information, which is inaccurate, the housing to the south of the subject site is at a notably lower level than the subject site. As such, no privacy issues arise.

#### **11.7 SCREENING FOR APPROPRIATE ASSESSMENT**

- 11.7.1 The nearest Natura 2000 site is the Ballinskellings Bay and Inny Estuary SAC, around 250m to the west. Given the minor nature of the proposed development, I do not consider that the proposed development would be likely to have any significant effects on the integrity of a European site having regard to its conservation objectives.

## **12.0 CONCLUSION AND RECOMMENDATION**

- 12.1.1 Based on the above, I recommend that permission be granted. On the basis of the information available, I do not consider that the subject site formed part of the open space, or indeed the application site under the parent permission for the apartments in the Old Cable Station in 1998. Furthermore, I do not consider that the proposed development would have an undue negative impact on the adjoining protected structure or its setting.
- 12.1.2 The first floor windows in both east and west elevations should be obscurely glazed by way of condition. Conditions should also restrict boundary treatment and planting to the front (north) of the proposed house.



### 13.0 REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development, the pattern of development in the vicinity, the zoning objective for the site, and the policies of the planning authority as set out in the Cahersiveen, Waterville & Sneem Functional Areas Local Area Plan 2013 – 2019, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not impact negatively on the adjoining Old Cable Station or its setting, would not detract from the character of the area and would be in accordance with the policies set out in the said development plan. 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 as amended by the further plans and particulars submitted on the 11<sup>th</sup> day of June 2015, 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 proposed development shall be amended as follows:
  - (a) All west facing and east facing windows at first floor level shall be fitted with permanently frosted or opaque glass, and shall be maintained as such in perpetuity.
  - (b) No boundary treatments or planting north of the north building line and/or west of the west building line shall be greater than 1.1m in height, and shall be maintained as such in perpetuity

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, and the development shall be carried out and maintained in accordance with these revised drawings.

Reason: In the interest of the residential amenities of the subject and neighbouring properties and in the interest of preserving the setting of and visibility of the Old Cable Station.

3. Details, including samples, of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. A proposal for the numbering of the house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of urban legibility.

6. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 of Part 1 of Schedule 2 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the dwelling.

7. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. 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 the 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.

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G. Ryan  
Planning Inspector  
20<sup>th</sup> November 2015