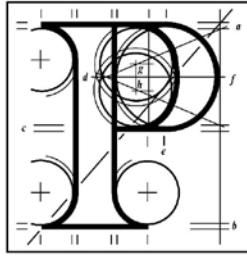


An Bord Pleanála



Inspector's Report

Development: Permission to alter condition no. 34 of granted application reg. no. P04/29. This will involve changing house nos. 9, 10, 15, 16, 17, 18 & 20 from their use as holiday homes to use as permanent residences at Beal an Inbhir, Shanakyle Road, Leadmore West, Kilrush, Co. Clare.

Application

Planning authority: Clare County Council
Planning application reg. no. P15/407
Applicant: Patrick J Egan & James J Burke
Type of application: Permission
Planning authority's decision: Grant, subject to 2 conditions

Appeal

Appellant: Deirdre Hehir
Type of appeal: Third party v Decision
Observers: None
Date of site inspection: 6th November 2015
Inspector: Hugh D. Morrison

Site

The site is located 1 km to the west of the town centre of Kilrush in the westernmost outskirts of the town along the northern side of the Estuary. This site relates to two of the blocks of houses that lie on the eastern cul-de-sac off a spine road. This cul-de-sac wraps around an area of grassed open space that fronts onto the Shanakyle Road. These blocks are three storeys high and they each comprise six houses. They are accompanied by a further two blocks that are also three storeys high and which comprise four houses.

Another cul-de-sac extends to the west of the said spine road. This cul-de-sac is accompanied by two pairs of two storey semi-detached dwelling houses. The spine road itself extends further to the north west and it is accompanied by eleven pairs of two storey semi-detached dwelling houses and a vacant site, which is the subject of application reg. no. P15/408 and appeal ref. no. PL03.245428.

The site is composed of seven houses, i.e. those numbered 9 & 10 in one of the aforementioned six house blocks and those numbered 15, 16, 17, 18 & 20 in the other one (total floorspace 913.1 sq m). Each of these houses accommodates two bedrooms on the ground floor, a further bedroom and balcony on the second floor, and a continuous living room/dining room/kitchen on the first floor. Half width two storey returns accompany each house and, where such returns adjoin, they are served at first floor level by a shared external staircase to the rear. Each house has a drive-in to the front and an enclosed rear garden.

Proposal

The proposal would entail an alteration to condition 34 attached to the parent permission to the housing site that was granted to application reg. no. P0/24. This condition requires the proposed houses on the aforementioned eastern cul-de-sac to be used exclusively as holiday homes for short term tourist accommodation. This proposal would entail the omission of the houses numbered 9, 10, 15, 16, 17, 18 & 20 from this condition, thereby enabling them to be used as permanent residences.

Planning authority's decision

Permission was granted subject to 2 conditions.

Technical reports

- An Taisce: Changed housing market/needs acknowledged.
- Irish Water: No objection, standard notes requested.

Grounds of appeal

Alleged material contraventions of the CDP:

- (i) Under CDP 3.9, the balance struck between permanent housing and holiday homes in the parent permission should be retained rather than unravelled.
- (ii) Under CDP 4.3, the reservation of 20% of land in new estates for social and affordable housing would be reviewed within the lifetime of the Plan. No review appears to have been undertaken to date and, if the subject houses and the dwelling house proposed under application reg. no. P15/408 are aggregated, then 40% would be used for social housing.
- (iii) Under CDP 4.4, the planning authority undertakes to acquire lands for social housing through, amongst other things, negotiated turnkey projects and yet the appellant and her neighbours as stakeholders in the estate have not been consulted concerning the authority's intentions for the subject houses.
- (iv) Under CDP 4.4, the aforementioned balance would unravel, and yet the impetus appears to be the ending of a 10 year tax incentive scheme and an agreement with the local authority to purchase the subject houses, rather than any contraction in the market for holiday homes. (Given the said agreement, the planning authority may have a conflict of interest in its determination of this application).
- (v) Under CDP 4.10, similar considerations arise as those cited under (iv) above.
- (vi) Under CDP 12.1, linkages between tourism-related developments are emphasised. Attention is drawn to the marina, on the one hand, and the lack of accommodation options in Kilrush, e.g. there is no hotel, no caravan and camping site, and little B n' B accommodation, on the other hand. In these circumstances, holiday homes are of particular importance.
- (vii) Under CDP 12.2, similar considerations arise as those cited under (vi) above.
- (viii) Under CDP 12.3, the scale and size of tourism-related developments is emphasised. The existing holiday homes have proven to be successful in these respects.
- (ix) Under CDP 12.4, similar considerations arise as those cited under (iv) above.
- (x) Under CDP 12.2, the promotion of tourism would be impeded by the proposed loss of holiday homes.
- (xi) Under CDP 14.1, holiday homes are a necessary accompaniment to the car based, as distinct from coach based, tourism that is typical of West Clare.

(xii) Under CDP 14.1, the promotion of marine tourism is undermined by the lack of accommodation available for visitors.

(xiii) Under CDP 14.14, similar considerations arise as those cited under (xii) above.

(xiv) Under CDP 15.7, similar considerations arise as those cited under (xii) above.

Alleged breaches of the TDP:

- Goals VIII & XII seek the promotion of tourism, particularly the marina and associated tourism facilities. The loss of holiday homes close to the marina would not further these goals.
- The core strategy must set population targets in the light of existing services and planned investment in the same. Kilrush's population declined by 4.4% between 2006 and 2011 and yet the Plan seeks its growth with tourism central to economic development. Census results do not distinguish between holiday homes and vacant homes and so the total number of the former in the town is unknown. (The combined total is 31.6% of the housing stock, whereas the equivalent national figure is 16.8%). In these circumstances, to allow the loss of such homes, especially ones near the marina, should not be contemplated.

The case planner's report does not discuss the proposed loss of holiday homes within the context of the TDP's promotion of the same. It does allude to other such homes on the estate for which the tax incentive scheme would expire in 2016 and so the question arises as to whether they, too, will be the subject of a similar application.

- Objective TDP 3.9 requires a mix of house types and sizes on new estates. The case planner does not appear to have undertaken such an evaluation.
- Objective TDP 3.13 relates to 20% of the site being for social housing. Under this application and the parallel one, this figure would rise to 40% with the prospect of a higher figure again in the future.
- Notwithstanding the TDP's undertaking to monitor its implementation over the life of the same, there is no evidence that the planning authority's decision was informed by such monitoring.
- The TDP's economic strategy, tourism development, and maritime development are all inter-related, as are these themes in the Strategic Integrated Framework Plan for the Shannon Estuary. Notwithstanding the TDP's undertaking to monitor its implementation of the said themes over the

life of the same, there is no evidence that the planning authority's decision was informed by such monitoring.

- Given the implications of the proposal for tourism, Bord Failte should have been consulted at the application stage.
- The TDP recognises the gateway status of Kilrush, e.g. the marina, to West Clare and hence the importance of tourist accommodation. This Plan seeks to protect the town's tourism resource and to encourage the location of tourist accommodation near to the town centre. The current proposal would materially contravene these objectives.
- The TDP emphasises place making. The housing estate has been established as a place that incorporates holiday homes. Thus, the proposed loss of such homes would erode this sense of place.
- The TDP seeks that visitors to Kilrush would stay for longer periods. Again the proposed loss of holiday homes would be at odds with this quest. Furthermore, any results from visitor surveys have not informed the planning authority's decision on the current proposal.
- The TDP requires that, in the case of new build development in the harbour area, (including the marina), a master plan be prepared. In advance of such preparation, small scale changes of use can be entertained, provided they accord with the TDP's policy and objectives for this area, e.g. the provision of tourist accommodation. The current proposal would not therefore accord with this Plan.

Site notice

Contrary to the requirements of the Planning and Development Regulations, 2001 – 2013, the applicant's agent did not include his address on the site notice and so it should have been invalidated.

Ownership

The history of the housing estate is reviewed. The owners of the same have variously been cited as Leadmore West Partnership Limited, Patrick J Egan & James J Burke, and Spanish Point Homes limited. In these circumstances, the applicants should demonstrate that they are the legal owners of the site. This matter was raised at the application stage and, contrary to the advice of the Development Management Guidelines, it was not the subject of a request for further information. Where remaining doubt exists Section 34(13) of the Planning and Development Act, 2000 – 2014, is of relevance.

The applicants indicate that they purchased the site in 2003 and yet the subsequent application reg. no. P04/29 was made by Leadmore West Partnership Limited, who indicated that it was the owner of the site.

Pre-commencement contributions

A review of the parent permission granted to application reg. no. P04/29 indicates that there may be pre-commencement contributions outstanding against the existing development of the overall site.

Part V

The current application makes no reference to Part V obligations beyond stating that “there was an agreement with Kilrush Town Council under P04/29 relating to Part V.” However, the parent permission has expired and so the question of Part V does arise.

Flooding

Contrary to the applicants’ assertion, the overall site as constructed has flooded, due to a pipe of insufficient capacity.

Occupancy

Attention is drawn to the answer given to Question 2 of Part 2(a) of the completed forms, which pertains to the occupancy of the proposed dwellings. The answer given is “for sale”, when it is common knowledge that the local authority has agreed to purchase the same for social housing.

Site selection

Attention is drawn to the answer given to Question 8 of Part 2(a) of the completed forms, which pertains to the reason for selecting the site. The answer given is “n/a” and yet it is common knowledge that the local authority has agreed to purchase the same for social housing.

Previous compliance history

Attention is drawn to on-going enforcement proceedings in relation to 15 of the 34 conditions attached to the parent permission. Given such a track record the planning authority could have exercised its discretion under Section 35 of the aforementioned Act and refused the current application. However, it chose not to do so, thereby raising concern that it has a conflict of interest in its dual role as planning and housing authority.

Responses

The **planning authority** has responded to the above grounds of appeal as follows:

Alleged material contraventions of the CDP:

- (i) The planning authority's assessment of the proposal was by means of a planned approach.
- (ii) The proposal was assessed on its merits. The application does not refer to the sale of the subject houses to the local authority for use as social housing.
- (iii) See response to (ii).
- (iv) See response to (ii). The planning authority refutes that it has a "beneficial interest" in the granting of planning permission.
- (v) No physical alterations to the subject houses are proposed. The proposal would be consistent with the Housing Strategy and the Guidelines for Sustainable Residential Development in Urban Areas.
- (vi) The planning authority's assessment considered existing tourist accommodation in Kilrush and the town's requirements for the same under the DP's capacity to deliver on these requirements.
- (vii) See response to (vi).
- (viii) The CDP seeks to facilitate the location of tourist accommodation in designated settlements.
- (ix) See response to (viii).
- (x) –
- (xi) & (xii) See response to (viii).
- (xiii) See response to (viii). The proposal was the subject of an AA screening exercise.
- (xiv) See response to (viii).

Alleged breaches of the TDP:

The planning authority's assessment had regard to all the objectives of the TDP.

Site notice

The site notice was validated by the planning authority.

Ownership

Advice contained in the Development Management Guidelines with respect to Section 34(13) of the Planning and Development Act, 2000 – 2014, is cited.

Pre-commencement development contributions

A letter from the planning authority to the applicants, dated 28th July 2014, addresses this matter.

Part V

Condition 3 of the parent permission required that an agreement under Part V be entered into. This was duly done.

Flooding

Correspondence from the applicants' engineer on foot of a warning notice, dated 11th April 2014, refers to works, which were subsequently approved, to overcome ponding by means of a wearing course and the installation of gullies and surface preparation works on the L256.

Occupancy

See response to (ii) above.

Site selection

The subject houses are in the ownership of the applicants.

Previous compliance history

Progress is reported with respect to the on-going enforcement action.

The **applicants** have responded to the above grounds of appeal as follows:

Site history

Progress is reported with respect to the on-going enforcement action.

The CDP

The current proposal would enhance the long term viability of the housing estate within Kilrush and secure social and economic benefits associated with an increase in the local permanent population.

Part V

Under the Part V agreement for the overall site, dwelling houses numbered 23, 24, 28, 38, 40 & 41 are reserved for affordable housing, as distinct from social housing. The applicant has incorrectly regarded these dwelling houses as social housing.

Whether the subject houses and the proposed new build dwelling houses, which are the subject of application reg. no. P15/407 would be used for social housing is not a material planning consideration.

Objective CDP 4.4

This objective refers to the local authority “negotiating turnkey projects”. This reference is cited by the applicant. However, it relates to negotiations between the local authority and land owners/developers rather than residents of existing housing estates.

The TDP

The appellant has cited selectively from the TDP. She has not drawn attention to its sustainable population goal and its objectives for social inclusion through the provision of a high quality and mix of housing for all members of the community. The appeal is effectively contesting these objectives. Furthermore, the TDP recognises that it must be able to respond to changing circumstances over its lifetime, such as the urgent requirement for permanent housing within Kilrush.

Response to alleged contraventions

- (i) See comments under “The TDP” above.
- (ii) See comments under “Part V” above.
- (iii) See comments under “Objective CDP 4.4” above.
- (iv) The appellant has mistakenly cited CDP 4.4, when CDP 4.9 is in view. In accordance with this Objective, the applicants have identified an over-supply of holiday homes, hence their current proposal.
- (v) The proposal would further Objective CDP 4.10, which seeks a good mix of types and sizes of houses on new estates. The applicant refers to the expiry of tax incentive schemes and the nature of proposed agreements, both of which do not constitute material planning considerations.
- (vi) The applicant incorrectly states that Kilrush has no caravan park, whereas there is such a facility, known as “Aylevaroo” Caravan Park, which has been established since the 1970s on the outskirts of the town.
- (vii) & (x) The proposal would not prejudice the quest to develop a flagship international scale tourism project.
- (viii) See comments under “The TDP” above.
- (ix) See comments under “The TDP” above.

(xi) & (xii) The proposal would not prejudice future proposals for the Estuary.

(xiii) The appellant appears to be referring to CDP 14.8. See comments under (xi) & (xii) above.

(xiv) . See comments under (xi) & (xii) above.

Response to responses

The **planning authority** has no further comments to make.

The **appellant** has responded to the above responses as follows:

Site history

The existing housing estate includes 20 holiday homes. The DP acknowledges the need for more of these homes. The applicant claims that there is a need for more permanent housing in Kilrush. He has not demonstrated that this is so and, in any event, there are lands zoned for residential development.

Integration

The applicants now laud integration. However, the Part V agreement for the overall site only allowed for six affordable dwelling houses. Social housing was presumably dealt with by way of a monetary payment or land in lieu of such payment.

Part V

To date the housing estate in question comprises 42% holiday homes, 14% affordable homes, and 44% purchased homes. Under the current application and the parallel one (P15/407), these proportions would become 25% holiday homes, 35% social and affordable homes, and 40% purchased homes.

The appellant insists that the prospective sale of the subject houses to the local authority for use as social housing is a material planning consideration and she reiterates the authority's conflict of interest in this matter.

(i) The case planner's report does not evidence that up to date housing need data informed the planning authority's decision.

(ii) The 20% requirement has recently been revised to 10%.

(iii) The debarring of the applicant's input to the future composition of the housing estate is indefensible: she and the other purchasers effectively subsidised the affordable homes that have been built.

(iv) No data has been provided to demonstrate the contention that there is an over-supply of holiday homes in Kilrush.

(v) The alleged deficit in permanent housing is a reference to social and affordable housing rather than houses for purchase. If there was a deficit in houses for purchase, then residential development proposals would be forthcoming and there would be the opportunity to provide more social and affordable housing under Part V.

(vi) The case planner's report does not refer to the DP's tourist accommodation objectives.

(vii) See (v) above.

(viii) The applicants' unsubstantiated reference to a housing shortage in Kilrush by implication is a reference to the social housing outcome that propels the current application.

(ix) The proposal would address one problem, the need for social housing, while creating another, depleting the stock of holiday homes.

The applicant reiterates comments previously made in interacting with the applicants' conclusions.

Planning history

- P04/29: 60 dwelling houses to be occupied as permanent residences or holiday homes with site works, landscaping and connections to public services: Permitted. Condition no. 34, which is the subject of the current application, states the following:

The proposed holiday homes shall be used for short-term tourist accommodation only and shall not be used as a place of normal residence, without a further grant of planning permission.

Reason: in the interest of orderly development.

- Several applications to amend aspects of the parent permission followed.
- UD08/07: Warning notice issued with respect to non-compliance with 15 conditions attached to the parent permission, including condition no. 34.
- P15/408: Construction of five dwelling houses (a pair of two storey semi-detached dwelling houses and three bungalows) on sites previously numbered 34, 35, 36 & 37 under the parent permission granted to application reg. no. P04/29. This application is the subject of parallel appeal ref. no. PL03.245428.

Development Plan

The Kilrush Town and Environs Development Plan 2014 – 2020 (TDP) shows the site as lying within an area that is zoned existing residential. Under Appendix 1, single dwelling houses for permanent occupation are normally acceptable in principle and, under Appendix 6.2.2, development management guidelines are set out with respect to urban residential development.

National planning guidelines

- Development Management
- Sustainable Residential Development in Urban Areas

Assessment

I have reviewed the proposal in the light of national planning guidelines, the CDP and the DP, relevant planning history, and the submissions of the parties. Accordingly, I consider that the application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Siting and design,
- (iii) Land use, and
- (iv) AA.

(i) Legalities

1.1 The appellant raises several matters relating to the validation of the current application, the ownership of the site, the manner in which the application forms have been completed, Part V, and enforcement issues. I will discuss each of these in turn.

1.2 With respect to validation, attention is drawn to the omission of the agent's address from the site notice. Note 7 to Form No. 1 of Schedule 3 to Article 19 of the Planning and Development Regulations, 2001 – 2013, requires that this address be included. The applicants have not responded to this observation and the planning authority has simply stated that the application was validated. As legally validation is the authority's role rather than the Board's, this matter is not one that I can pursue further.

1.3 With respect to ownership, attention is drawn to the variety of owners that have been cited in relation to the overall site since the parent application was made in 2004. The appellant cites the advice of the Development Management Guidelines to the effect that this matter should have been explored under a

request for further information at the application stage. The applicants have not responded to the said matter and the planning authority has likewise quoted the said Guidelines to the effect that the provisions of Section 34(13) of the Planning and Development Act, 2000 – 2014, could be referred to in any permission. I concur with this approach to the matter.

1.4 With respect to the completion of the application forms, attention is drawn to the answers given to questions relating to occupancy and site selection.

1.5 In the former case, issue is taken with the “for sale” response, as the appellant contends that “other” and social housing would have been the more transparent answer. The applicants have not responded to this matter, while the planning authority insists that that the future status of the proposed permanent residences is not a material planning consideration. I consider that, if there is indeed an agreement between the applicants and the local authority to sell the subject houses, then the answer given is questionable insofar as it implies that they would be for sale on the open market rather than simply sold to the local authority. I will discuss the planning authority’s response under the second heading of my assessment.

1.6 In the latter case, issue is taken with the “n/a” response, as the appellant contends that it is common knowledge that the subject houses would be used for social housing. The applicants have not responded to this matter, while the planning authority insists that the future status of the proposed permanent residences is not a material planning consideration. I note that the parent permission authorised 20 holiday homes and the current proposal pertains to 7 of these, 5 from one block of 6 and 2 from the other block of 6. In these circumstances, some elucidation as to the basis upon which houses were selected would have, in my view, been helpful.

1.7 With respect to Part V, attention is drawn to the absence of reference to Part V beyond the statement that the parent permission for the overall site was subject to a Part V agreement. The appellant observes that this permission has now expired. The applicants state that the said agreement pertained to the provision of 6 affordable houses and the planning authority confirms the existence of this agreement. I note that the parent permission was not fully implemented prior to its expiry. Whether this has had a bearing on the implementation of the said agreement, too, is unclear. I will discuss this matter further under the second heading of my assessment.

1.8 With respect to enforcement issues, attention is drawn to on-going proceedings with respect to non-compliance with 15 of the 34 conditions attached to the parent permission. Against this backdrop, the appellant considers that the planning authority should have exercised the power available to it under Section

35 of the aforementioned Act to refuse the current application on the basis of the applicants' track record. That this did not happen may be a signal of a conflict of interest between Clare County Council as planning authority and housing authority. Both the applicants and the planning authority report progress with the said issues. I note that the power available under Section 34 can be exercised by the planning authority as distinct from the Board. I note, too, that the suggested conflict of interest would not pertain to the Board.

1.9 I conclude that there are no legalities that would impede the Board from assessing the current proposal in the normal manner.

(ii) Siting and design

2.1 During my site visit, I observed that the subject houses on the site form part of a larger cluster of houses that under condition no. 34 of the parent permission are reserved for use exclusively as holiday homes. These houses total 20 in number and they are arranged in two blocks of 6 houses and two blocks of 4 houses. They are sited along the northern/eastern side of a cul-de-sac off the spine road to the overall housing estate and they overlook a grassed area of open space to the front of this estate with Shanakyle Road. Further to the south lies the estuary, including the marina off Merchant's Quay, and so the cul-de-sac is appropriately named Estuary View.

2.2 The site lies 0.25 km to the north west of the marina (0.9 km by road) and 0.6 km to the east of Merchant's Quay and the town centre. The subject houses are therefore conveniently placed for both the marina and the town centre and so the appropriateness of their location for their existing use as holiday homes is self-evident.

2.3 The subject houses have been designed as holiday homes. Thus, day time accommodation is provided on the first floor over one continuous space, i.e. the kitchen/dining/living room with a pair of French windows in and an accompanying Juliet balcony on the front elevation. Four of the seven subject houses are mid-block ones. Each of these houses has a two storey return that adjoins the two storey return in the adjoining mid-block house. A shared external flight of steps links the first floor of these returns with their rear gardens. Of the said four houses, two share their flight of steps with one another, while the remaining two share their flight of steps with a house that is not the subject of the current proposal, i.e. one that would remain in use as a holiday home.

2.4 Night time accommodation is provided on the ground floor, by means of two double bedrooms, and on the second floor within the roofspace, where the double bedroom is accompanied by a small balcony that is inserted within the front roof plane.

- 2.5 Each of the subject houses would be effectively three storeys and each would have a floorspace of 128 sq m. Under Table 5.1 of the Quality Housing for Sustainable Communities Best Practice Guidelines, the recommended floorspaces for 3-bed/6-person three storey houses would be exceeded, apart from with respect to storage space where the recommended minimum of 6 sq m would not be met.
- 2.6 I consider that the design of the subject houses is such that they are inherently suited to being retained as holiday homes within the blocks of holiday homes of which they form a part. Such suitability is evidenced, externally, by the shared usage of flights of steps and, internally, by the siting of day time accommodation at first floor in a continuous open plan format, which would be served by a pair of French doors and a Juliet balcony, and the virtual absence of internal storage space. These features of the said houses would impede their successful re-use as permanent residences. In particular the siting of day time accommodation at first floor level would not be family-friendly and it would have adverse implications for those with mobility impairments. Furthermore, the continuous open plan format would not represent best practice, which advocates that kitchens be separated from dining rooms and living rooms. The dearth of internal storage space would, likewise, fail to conform to best practice.
- 2.7 I, therefore, conclude that the siting and design of the subject houses is more appropriate for their existing authorised use as holiday homes rather than their proposed use as permanent residences.

(iii) Land use

- 3.1 Map F of Volume 2 of the Kilrush Town and Environs Development Plan 2014 – 2020 (DP), shows the site as lying within the settlement boundary and in an area that is zoned existing residential. This Map also shows lands within the vicinity of the site that are zoned proposed residential and, to the south, the harbour area within which there is a designated mixed use and general development area.
- 3.2 The site forms part of a wider housing site that has been partially developed under the parent permission granted to application reg. no. P04/29. This permission approved 60 dwelling houses of which 20 were identified for use as holiday homes, i.e. Nos 1 – 20 Estuary View, with the remainder to be used as permanent residences. (Under an accompanying Part V agreement, the applicant states that 6 of these residences were to be reserved for affordable housing). This mix of holiday homes and permanent residences, including affordable housing, was considered appropriate.
- 3.3 Forty-nine of the sixty houses approved by the parent permission have been built, including all the holiday homes and possibly all the affordable houses. Thus,

while the parent permission envisaged 66% permanent residences and 33% holiday homes, in practise, 48% of the former have been provided to date and the entirety of the latter. Under the current proposal, the originally envisaged split would become 78% and 22%. A precedent would also be set for similar changes of use in the future.

- 3.4 The description of the proposal is for the re-use of the subject houses as “permanent residences”. No reference is made to any onward sale of these houses to the local authority for use as social housing and, in land use terms, the tenure of a permanent residence is not normally of interest in assessing a planning application. Nevertheless, the appellant refers to an agreement between the applicants and Clare County Council for the said sale and neither the applicants nor the planning authority have confirmed or denied the same. Any permission granted to the current application would be silent on the possibility of social housing usage. Thus, in the absence of the said agreement, the subject houses could be sold on the open market as permanent residences. Given this situation, the applicant should address Part V of the Planning and Development Act, 2000 – 2014, and either obtain a certificate of exemption or enter into a Part V agreement, as appropriate. This matter could be conditioned.
- 3.5 The appellant quotes extensively from the CDP and the TDP. She thereby sets out the situation pertaining to Kilrush wherein tourism development has taken place, e.g. the marina, and yet the town has a shortage of accommodation options for visitors. Thus, for these and any similar future developments to yield their full economic benefit, such options need to be provided, e.g. holiday homes. She also draws attention to the absence of data that allows the numbers of holiday homes to be delineated from vacant houses within Census returns. Accordingly, she contends that the proposed loss of holiday homes would run contrary to tourism policies and objectives in the said Plans and that, in any event, these Plans zone ample land for new build permanent residences.
- 3.6 The planning authority has responded to the appellant’s case by insisting that it did have regard to the CDP and TDP in coming to its decision on the current proposal and the applicants have responded to the appellant’s case by drawing attention to other policies and objectives of the said Plans that pertain to population, inclusiveness, and housing provision which, they say, the appellant has neglected.
- 3.7 Clearly, the subjects addressed by the CDP and TDP range widely and the accompanying policies and objectives have a greater or lesser bearing upon the current proposal. Many of these policies and objectives leave it open to interpretation as to whether or not in any assessment of their use they have been contravened, i.e. the absence of objective and quantifiable features can make it difficult to state categorically whether they have been contravened and if

so whether they have been contravened materially. In these circumstances, I am not inclined to engage with the appellant's list of alleged materially contravened CDP extracts.

3.8 The former Plan specifically addresses holiday homes under Objective 4.9. It states the following:

(a) To permit holiday homes in settlements where the developments are of a scale and location which contributes to sustainable communities, ensuring an appropriate balance between the number of permanent homes and holiday homes.

(b) In settlements where an oversupply of holiday homes has been identified, to support and facilitate the conversion of such units to permanent homes or appropriate alternative uses.

3.9 The latter Plan addresses tourism accommodation. Thus, under Objective 9.4(c), it seeks to ensure that such accommodation is "provided where they can best support the provision of services and the general economic vitality of the plan area". Specifically, Section 9.3.3 of this Plan states that "Tourism accommodation should ideally be located in proximity to the town core/retail area..." As outlined under the second heading of my assessment, the site is close to both the marina and the town centre.

3.10 I note that as originally submitted the parent application proposed 60 dwelling houses "to be occupied as permanent residences or holiday homes" and that following a request for further information 20 of these dwelling houses were delineated for use as holiday homes and subsequently conditioned for such usage. Thus, in 2004/05, both the applicant and the planning authority agreed on the appropriateness of including holiday homes in the overall housing development and of assigning formally one third of the proposed dwelling houses for this purpose, i.e. Nos. 1 – 20 Estuary View.

3.11 I note, too, that the current proposal would entail the re-use of 7 of the said holiday homes as permanent residences, i.e. two houses within one block of six, Nos. 9 & 10, and five houses within the other block of six, Nos. 15, 16, 17, 18 & 20. Thus, the permitted numbers and proportion of holiday homes would be reduced. While the applicants have stated that they have identified an oversupply in the provision of holiday homes in Kilrush, the appellant draws attention to the absence of any evidence to support this claim. I, therefore, consider that the provisions of Objective CDP 4.9 have not been pursued sufficiently. Under the second heading of my assessment, the appropriateness of the subject houses as holiday homes was established. In these circumstances, I consider that it would be premature to accede to the current proposal and that to do so would contravene the aforementioned Objective.

3.12 As indicated under the first heading of my assessment, the applicants have not explained their selection of the subject houses from within the said two blocks of the four that presently comprise the holiday homes within the overall housing site. In the absence of any explanation, their approach lacks the coherence evident in the permitted parent application, wherein the holiday homes were clustered together on their own on one cul-de-sac, and it would establish a precedent for similar changes of use in the future from among the remaining holiday homes.

3.13 I, therefore, conclude that the current proposal would lead to a potentially detrimental loss of holiday homes to Kilrush, wherein the provision of such accommodation is sought in locations such as that of the appeal site, and that such loss would unbalance the mix of residential uses on the wider housing site in a manner that would lack coherence and that would establish an adverse precedent for similar proposals in the future.

(iv) AA

4.1 The site is not in a Natura 2000 site, although c. 420m to the south west of it lie the River Shannon and River Fergus Estuaries SPA and the Lower Shannon SAC. The current proposal is for a change of use only to existing houses on this site, from holiday homes to permanent residences, and so no physical works would arise. These houses are connected to the public sewer and would continue to be so connected. Whereas there is a source/pathway/receptor route between these houses/the public sewer/these Natura sites, given the envisaged continuity in residential use, I do not consider that any significant effect upon the Conservation Objectives of the Natura 2000 sites would ensue.

4.2 Having regard to the nature and scale of the proposed development, 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.

Recommendation

In the light of my assessment, I recommend that permission to alter condition no. 34 of granted application reg. no. P04/29. This will involve changing house nos. 9, 10, 15, 16, 17, 18 & 20 from their use as holiday homes to use as permanent residences at Beal an Inbhir, Shanakyle Road, Leadmore West, Kilrush, Co. Clare, be refused.

Reasons and considerations

The subject houses are, due to their location and design, particularly suited to their existing use as holiday homes. They form an integral part of the existing row of exclusively holiday homes on the cul-de-sac known as Estuary View.

Under Objective 4.9 of the Clare County Development Plan 2011 – 2017, holiday homes can be converted to permanent homes in settlements where an oversupply of such homes has been identified. The applicant has not demonstrated that such an oversupply exists in Kilrush and so to accede to the proposed change of use of the subject houses to permanent residences would be premature and it would risk damaging tourism in this town through the under-provision of holiday homes. Objective 4.9 would, thereby, be contravened.

Furthermore, the proposed loss of holiday homes would upset the balance between such homes and permanent residences on the wider housing site and it would undermine the coherence of the layout established by this site, whereby holiday homes are grouped together on their own. This proposal would also establish an adverse precedent for similar proposals in the future, which would be difficult to resist and which would further upset the said balance and undermine the said coherence. Accordingly, it would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

15th December 2015