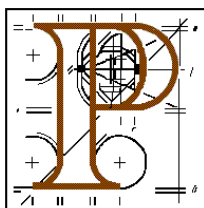


An Bord Pleanála



Inspector's Report

PL. 03 246730

DEVELOPMENT: Alterations to Condition No 34 of Grant of Permission under P. A. Reg. Ref. P04/29 for change of use of House Nos. 9, 10, 15, 16, 17 and 20 from holiday home to permanent residence

LOCATION: Beal an Inbhil, Shanakyle Road, Leadmore West, Kilrush, Co. Clare.

PLANNING APPLICATION

Planning Authority Clare City Council.
P. A. Reg. Ref: 16/246
Applicant: Patrick Egan and James Bourke
Decision: Grant Permission.

PLANNING APPEAL

Appellant Mairead O'Brien
Type of Appeal Third Party Appeal against decision to Grant Permission.
Observers None

Date of Site Inspection: 22nd August, 2016.

Inspector: Jane Dennehy.

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 Beal an Inbhir, a residential development of sixty houses and apartments is located in the townland of Leadmore West at the western side of Kilrush with access from the Shanakyle Road and overlooks the estuary. Unit Nos. 9, 10, 15, 16, 17, 18 and 20 are three bedroom dwellings with two bedrooms on the ground floor and a third master bedroom which opens onto terraces to the front on the second floor of each dwelling. The living room, kitchen and dining room accommodation is at first floor level in each dwelling. Five of the dwellings, Nos 15-20 are within a terrace of six dwellings and Nos 9 and 10 are in another terrace of six dwellings all of which overlook the internal access road, ("Estuary View") and public open space. At the time of inspection a single storey area to the side of No 10 was in use as a reception area. There is a footpath along the road frontage to the front of the development and along the frontage to the east side toward the town centre.
- 1.2 The lands are steeply sloped, falling southwards towards the estuary. On the opposite side of the estuary there is a marina development and residential development on slopes on the other side of the estuary. To the east to the north and north east of the appeal site there are lands in agricultural use. At the time of inspection an agent's sign was in place at the entrance to the estate displaying details of property for sale. It would appear to refer to development not constructed. The majority of the units constructed appeared to be occupied at the time of inspection.

2.0 THE PLANNING APPLICATION.

- 2.1 The application lodged with the planning authority on 19th May, 2016 indicates proposals for change of use of seven, three storey houses within the development to permanent residential use from holiday home use. The proposed development entails omission of the requirements of Condition No 34 or the parent permission under P. A. Reg. Ref. 04-31029.
- 2.2 According to the written submission made on behalf of the applicant the proposal accords with the current Clare County Development Plan 'settlement strategy, the draft county development plan settlement strategy and, with The Kilrush Town and Environs Development Plan's settlement strategy and will provide for future projected population growth whereas it has been established that there is no demand for holiday homes, the occupancy rate being circa twenty nine per cent with tourism in the area being particularly seasonal.

- 2.3 Objections was received from two parties, including the appellant, (Mairead O'Brien) in which the lack of demand for holiday home facilities is contested and it is submitted that the proposal contradicts development plan policies and that the units are unsuitable for permanent residential use.
- 2.4 The planning officer according to his report considers the proposed development to be consistent with the strategic objective of the Clare County Development Plan.
- 2.5 **Decision of the Planning Authority:** By order dated, 19th May, 2016, the planning authority decided to grant permission subject to two conditions. Condition No 2 contains a requirement that walls and fences may not be erected on the front boundaries for reasons of visual and residential amenity.

3.0 **PLANNING HISTORY:**

- 3.1 According to the planning officer report the site location has the following relevant planning history:

P. A. Reg. Ref. 15/407: Permission was refused for a similar proposal for change of use for the same Units with reference to Condition No 34 the parent permission under P. A. Reg. Ref. 04-29 on grounds that (1) the applicant had not demonstrated oversupply of holiday homes and (2) risk of under provision of holiday homes in the town.

P. A. Reg. Ref. 04-31029: Permission was granted for sixty houses for use as permanent residences or holiday homes. Condition No 34 is reproduced below: "*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*".

- 3.2 The development lands have a record of various other planning applications for dwellings or variations within the development permitted under P. A 04-31029.

4. **THE APPEAL**

- 4.1 An appeal was received from Mairead O'Brien of No 21 Beal An Inbhir on her own behalf on 14th June, 2016.
- 4.2 The appeal is a very detailed document which is twenty nine pages in length and includes extensive extracts from several strategies, polices

and objectives within both the Clare County Development Plan and the Kilrush and Environs Development Plan. It is claimed that the proposed removal of the seven units from the holiday accommodation offer in Kilrush is in direct material contravention of each of the strategies, policies and objections that are quoted and commented on in the appeal.

4.3 Matters raised relating to the above are outlined below:

- The application is motivated by the ending of the ten year tax incentive for holiday home development that the rationale for the grant of permission for subject dwellings as holiday homes is still very applicable.
- It has not been demonstrated that there is oversupply of holiday accommodation in Kilrush and that the proposed development is on contravention of core settlement policies. There is a shortfall of short term let accommodation and that at n even in Kilrush Marina in July, accommodation cannot be found in Kilrush or the environs.
- The proposed development is in contravention of the county and town's settlement strategy, tourism infrastructure and marketing objectives to support Kilrush as a tourism destination with existing and future tourism potential.
- The proposed development is contrary to proactive encouragement in the local community of development of tourism enterprise, resources and attractions, including in particular the Kilrush Harbour Area and Marina.
- Not all development contributions applicable to the permitted development have been paid by the developer.
- A complaint, in 2011 about a pipe which has insufficient capacity to serve the development was made. The deficient pipe has resulted in the area being flooded the drainage arrangements being unsatisfactory.
- There are ongoing enforcement issues relating to fifteen of the thirty four conditions, attached to the original grant of permission. Also included in the appeal is an account of compliance history at the Beal An Inhbhir. References are made to Condition 6 No. (b) estate naming; Condition No. 7, a channel adjacent to the footpath not constructed; Condition No. 9 (a) boundary walls; Condition No. 33, Development Contribution payment and, Condition No 34, Restriction of occupancy to short term letting.
- Permission for change of use relating to occupancy has also been sought for other houses.

- There are unresolved issues with regard to taking in charge of the development.
- With regard to Section 35 of the Planning and Development Acts, there have been ongoing legal proceedings concerning the applicants and their associated companies over planning building regulation and licensing issues. The County Council is party to a High Court action Copy of an extract (paras. 2.3 – 2.7.) Inspector's report on an appeal case is attached among the appendices. It includes remarks as to the design of houses being appropriate to holiday home use.
- The proposed change of use will adversely the amenity and privacy of the back garden in the context of overlooking.

5. OBSERVATIONS ON THE APPEAL BY THE PLANNING AUTHORITY.

- 5.1 In a submission received on 30th June, 2016 it is stated that the proposed development is considered to be in accordance to the proper planning and development of the area and is would not be seriously injurious to the amenities of the area or property in the vicinity.

6. APPLICANT'S RESPONSE TO THE APPEAL.

- 6.1 A submission was received from McCarthy Keville O'Sullivan on 4th July, 2016 attached to which is a copy of a letter to the applicant from West Coast Holidays in which it is stated that occupancy levels for Estuary View Holiday Homes was 28% in 2014 and 29% in 2015.
- 6.2 The submission is detailed and it includes an assessment on the settlement and housing strategies, each of objectives and extracts in the Local Area Plan and County Development Plan that were quoted and referred to in the appeal and some details the draft core strategies for Kilrush in the Draft Clare County Development Plan (2017-2013.) according to which a population increase over the plan period of 875 units equating to 355 households is provided for in the core strategy.
- 6.3 The submission includes survey details on tourism accommodation. Demand for and supply of overnight accommodation is low with B and B and guesthouse accommodation having an occupancy rate of 55 percent. Occupancy of self-catering accommodation is estimated to be 28 to 29 percent whereas the national average is 45 per cent. The town is not primarily a tourist town and there is an oversupply of tourism accommodation. There is more than adequate accommodation to facilitate the low number of overnight visitors to the town.

- 6.4 County level strategies in the county development plan and several of the objectives that the appellant contends that the proposed development materially contravenes are not relevant to the proposed development involving seven units.
- 6.5 The condition attached to the original grant of permission may have been with the intention to provide a holiday home offer in Kilrush but the reality is that there is no “holiday home” demand. The houses are equally suitable for permanent residential accommodation.
- 6.6 There are no Development plan requirements as to a balance between holiday and permanent housing. The proposed development will provide permanent residences within the town for the local community. The proposed development responds to a need for permanent residential development along with development on other zoned lands, brownfield and infill lands. The impact on the holiday letting supply will be minor.
- 6.7 Overlooking and loss of privacy, (to the appellant’s rear garden) are unrelated to the nature of occupancy at the subject houses. The houses are constructed in accordance with the required specifications are set out in the Development Management Guidelines in appendix 1 of the county development plan and the houses subject to the proposal are located at a lower level than the appellant’s property.
- 6.8 No evidence has been provided to support the claims that the site is prone to flooding. This claim should be disregarded. No ground or drainage works are proposed so exacerbation of flooding would not occur.
- 6.9 The compliance history which is referred to in detail in the appeal is no relevance to the consideration of the proposed development.
- 6.10 It is requested that the decision of the planning authority to grant permission be upheld on grounds that the proposed development satisfies all county and local area plan policies and objectives.

7.0 **ASSESSMENT**

- 7.1 Based on review of the documentation available in connection with the application and appeal, it has been concluded that, overall the appeal issues central to the determination of the decision as discussed below come within the following categories:

- Material contravention of statutory strategic settlement policy, housing strategy, tourism strategy and local economic development policy objectives;
- Undersupply of tourism accommodation;
- Overlooking loss of privacy at appellant property;
- Flooding at existing development not resolved and,
- Contravention of conditions attached to grants of planning permission.

7.2 Material contravention of statutory settlement policy, housing strategy, tourism strategy and local economic development policy objectives;

There is no substantive basis on which an argument that the subject proposal materially contravenes the strategic and specific policies and objectives relating to settlement and housing strategies, the tourism sector and the local economy in Kilrush can be confirmed. The strategic policies and development management objectives and standards within the county and local plans give no indication of a position with a statutory basis as to changes between permanent and holiday letting use of existing housing stock. The question is as to whether it has been demonstrated that the application of condition No 34 of the original grant of permission remains warranted and justified or that planning circumstances and context are such that the restriction to short term holiday letting use is no longer required.

7.3 The dwelling units and their internal layouts are clearly designed so to allow for the maximum potential of the site location, overlooking the estuary to the south to be accessed and enjoyed by the occupants and this holds particular appeal for the short term holiday letting sector. (The first floors are in living accommodation use and there are terraces at second floor level where there is a master bedroom and two additional bedrooms on ground floor level.) However this design and internal layout is suitable to use for permanent occupation and the accommodation, private open space provision and on and off street parking and public open space appear to fully accord with minimum standards set out in statutory guidance and in the current development plan for the area.

7.4 Undersupply of tourism accommodation.

It is considered that a satisfactory evidence based case has been made in the application and response to the appeal with regard to demand for and supply of guesthouse and of holiday letting accommodation and the settlement strategy for the proposed change of use and it is accepted that the town while an attractive and competitive tourism destination, does not attract a demand for significant overnight stays. On the other

hand, the Appellant's case is broad, generic and somewhat loosely and indirectly linked to the various strategies, policies and objectives that are quoted and discussed in the appeal.

7.5 The following observations made in the course of the course of the inspection which took place in late August which is within main holiday season may be of relevance. Some of the units subject to the appeal were occupied. Other units within the overall development of about sixty units appeared to be unoccupied. The overall development appeared to be presented and maintained to a high standard which an important consideration, given the propensity of larger scale short term holiday letting developments when occupancy is low and/or seasonal to appear in need of maintenance works.

7.6 It was also evident that the town core has not been in decline, with the building stock being in good condition, well presented with all ground floor units occupied with the exception of a few units in secondary locations at the outer edge. One large scale apartment block close to the marina area appeared to be unoccupied but the circumstances of this development are unknown.

7.7 Overlooking loss of privacy at appellant property;

The address for the appellant is the property at No 21, the footprint of which is perpendicular to and at the rear of No 20, one of the appeal site properties. There is a relatively steep fall in the ground level, southwards across the appellant property and downwards across the appeal site properties towards the public road. This relationship in terms of the ground level would be to the advantage of the appellant's property in that it ameliorates the scope for potential overlooking of her property. There would appear to be no material differences in terms of potential intrusiveness or other adverse impact on the amenity of the appellant's property in terms of overlooking or activities of the occupants within the dwelling, the rear gardens or in the immediate vicinity.

7.8 Flooding at existing development not resolved.

The appellant's case is based on a number of contentions about matters not directly related to the application in that there are no proposals for change to the servicing of the dwellings or to the dwellings themselves. The concerns would appear to relate to matters which would be appropriate for referral to an enforcement section and or Irish Water. They are not a matter for consideration in connection with the application and appeal.

7.9 Contravention of conditions attached to grants of planning permission.

As is the case with regard to the contentions about flooding attributable to the proposed development, issues relating to compliance with the

conditions attached to the original grant of permission are enforcement matters that are not directly related to the current application. It is considered the concerns are of no direct or material relevance to the consideration of the current proposal for change of use of the subject seven units.

7.10 Appropriate Assessment:

Having regard to the nature of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise.

8.0 CONCLUSION AND RECOMMENDATION.

8.1 Given the foregoing it is recommended that the appeal be rejected and that permission be granted on the basis of the reasons and considerations and subject to the conditions set out in the draft order overleaf.

DECISION

Grant Permission on the basis of the Reasons and Considerations and subject to the conditions set out below.

REASONS AND CONSIDERATIONS.

Having regard to the settlement strategy for the town and the location of the site of the proposed development zoning objective within an area zoned for residential use within the Kilrush and Environs Development Plan, 2014-2020 it is considered that, subject to compliance with the conditions set out below, the proposed development would not be seriously injurious to the residential amenities of adjoining properties or the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS.

1. The development shall be in accordance with Condition Nos. 1-33 attached to the grant of permission under P. A. Reg. Ref. 04/31029 on 3rd May, 2005 except as amended to conform with the plans and particulars lodged with the application and the condition set out below.

Reason: In the interest of clarity and consistency with the prior grant of planning permission.

2. No boundary walls or fences shall be erected in the front curtilage of any dwelling unit.

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

JANE DENNEHY.
Senior Planning Inspector
25th August, 2016.