



An
Bord
Pleanála

Inspector's Report PL03.247456

Development	Change of use of houses from holiday homes to permanent dwelling houses.
Location	Nos. 44 and 45, Lake View estate, Knockyclovaun, Killaloe, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P16/618
Applicant(s)	Jeremiah Daly
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Jeremiah Daly
Observers	none
Date of Site Inspection	3 rd January 2017
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on the northern side of Killaloe with access off the R.463 (Scarriff Road). The site is located within an existing development of holiday homes comprising 48 no. houses called Lake View. The form of development within this estate is two storey terraced dwellings.
- 1.2. The Lake View development is adjoined to the north by undeveloped lands to the east by undeveloped lands and the shore of Lough Derg, to the south east by Kincora Harbour and a marina for the berthing of motor cruisers for use on the lakes and to the south by an apartment development and a hotel. To the west, on the opposite side of the R. 463 (Scarriff Road), there are a number of individual dwellings.
- 1.3. The appeal site comprises two adjoining dwellings located close to the south east corner of the Lake View development. These dwellings have identical internal layouts and comprise three double bedrooms with a living, kitchen and dining area at first floor level. To the rear there is a small rear yard area that measures c. 5.5 metres square (c. 30 sq. metres total). The layout of the estate is such that the rear of the properties are visible from Harbour View to the south and the levels are such that the rear amenity space to the properties is overlooked from the public areas.
- 1.4. The stated floor area of each of the dwellings is 105.2 sq. metres and the overall site area is stated to be 0.0242 ha. There are parking spaces located to the front of the properties.

2.0 Proposed Development

- 2.1. The development the subject of this application comprises a change of use of the two units from holiday accommodation to permanent residential accommodation. No physical works to the existing properties or layout are proposed as part of the proposed development.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for two reasons that can be summarised as follows:

1. That the proposed change of use would undermine the coherence of holiday home usage in this development, would materially contravene a condition attached to the parent permission (Ref. P03/1032) and would therefore be contrary to the proper planning and sustainable development of the area.
2. That having regard to the limited floor area of the living accommodation of the units and the private amenity space it is considered that the proposed development would result in a poor level of residential amenity for future full time occupants and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

There is no report from the planning officer on the appeal file. The response made by the Planning Authority to the request for documents issued by An Bord Pleanala (dated 1st November, 2016 and received by the Board on 2nd November, 2016) does not make any reference to a planning officer report.

3.2.2. Other Technical Reports

None on file.

3.3. Third Party Observations

Irish Water - No objection.

3.4. Referrals by An Bord Pleanála – Prescribed Bodies

Details of the proposed development were referred by the Board to The Heritage Council, the Development Applications Unit of the Department of Arts Heritage Regional Rural and Gaeltacht Affairs, An Taisce, Fáilte Ireland and An Chomhairle Ealaíon. No response to these referrals was received.

4.0 Planning History

The following planning history is of relevance to the assessment of this appeal:

Clare County Council Ref. P03/1032 – Permission granted by the planning authority for the development of a holiday home scheme of 48 no. dwellings and all associated site works including car parking and pumping station. Condition No.21 of this permission specified as follows:

‘The units shall be used for short term letting only. No unit in the development shall be used for commercial overnight guest accommodation without a separate grant of planning permission, notwithstanding that any such use might be considered exempted development but for the provisions of this condition’.

Clare County Council Ref. P12/570 – Permission granted by the Planning Authority for the change of use of five holiday homes (Nos. 2, 15, 26, 28 and 39) at the Lake View Estate from holiday home use to permanent residential occupation. Condition No. 2 attached to this permission required that a boundary fence to the rear gardens of these properties would be erected. Condition 3 required the new owners and the properties to be covered by the existing management company.

Clare County Council Ref. P14/335 – Permission granted by the Planning Authority for the change of use of one holiday home (No. 11) at the Lake View Estate from holiday home use to permanent residential occupation. Condition No. 2 attached to this permission required that a boundary wall to the rear garden of the property would be erected. Condition 3 required the new owners and the property to be covered by the existing management company.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Clare County Development Plan, 2017-2023.

It is noted that the application the subject of this appeal was assessed by the Planning Authority under the provisions of the East Clare Local Area Plan, 2011-2017. Since the decision of the Planning Authority the new Clare County Development Plan, 2017-2023 has come into effect (as from 25th January, 2017).

Volume 3 of the Clare County Development Plan, 2017-2023 includes written statements and land use zonings for the four municipal districts located in the county. One of these districts is the Killaloe municipal district.

I note that a ministerial direction under s.31 of the Act and relating to an area of lands proposed to be zoned 'Tourism' was issued by the Minister on 25 January, 2017. The area of land to which this direction relates is located to the south of the bridge in Killaloe and is not impacted by the current proposal.

The appeal site is zoned 'Tourism' under the provisions of the Clare County Development Plan, 2017-2023. On lands zoned for Tourism the land use '*Residential Development – Dwelling Houses*' is identified as a use that is not normally permitted. '*Residential – short term tourism accommodation*' is identified as being Open for consideration and 'Multiple Residential Units' identified as Open for Consideration.

The Plan states that lands zoned for Tourism use shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists / holiday makers and visiting members of the public.

Objective CDP4.13 of the plan relates to holiday homes and states that in developments where there is an identified over supply of holiday homes (namely Kilkee, Liscannor and Querrin) it will be an objective to permit only new housing for permanent occupancy.

It is also stated that it will be an objective to support and facilitate the conversion of some holiday home units to permanent homes or appropriate alternative uses where it can be demonstrated that both the dwelling and associated infrastructure are of a sufficient standard to support the proposed new use and that the planning authority is satisfied that the conversion will not have a negative impact on the tourism product in the area.

Under **Paragraph A1.3.2** Urban Residential Development, it is stated that developments should be in accordance with the DoE Guidance on Sustainable Residential Development in Urban Areas, 2009. It is specified that the minimum rear garden depth should be 11 metres. No specific standard for private amenity space is cited in the plan.

5.2. **Guidance on Sustainable Residential Development in Urban Areas, 2009**

Paragraphs 7.8 and 7.9 of the guidance relate to private amenity space provision. It is stated that all houses should have an area of private amenity space behind the building line. It is stated that smaller patio type layouts may be acceptable in more innovative layouts where communal open space in the form of a courtyard.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The following is a summary of the main issues raised in the first party appeal submitted:

- That the decision conflicts with previous decisions of the planning authority to grant permission for change of use.
- That the proposal is consistent with Pillar 5 of 'Rebuilding Ireland – Action Plan on Housing and Homelessness'. This seeks to ensure that existing housing stock is used to the maximum degree possible focussing on measures to use vacant stock to renew urban and rural areas.

- That the units have private amenity space and access to the public open space within the development and wider open space in the form of woodland and the marina.
- That the occupancy rate within the Lake View development is only 28% due to the oversupply of holiday homes within the Killaloe area. The occupancy rate does not give a valid rate of return on these units.
- That multiple housing units are open for consideration on lands that are zoned Tourism under the East Clare LAP. Under the Draft Clare County Plan multiple residential units are indicated as being open for consideration.
- There are no general objectives regarding the protection of tourism in Killaloe within the draft plan.
- That the dilution of tourist accommodation in Killaloe is warranted and would increase the vitality of the existing holiday home stock.
- That the proposed houses would provide a higher standard of residential amenity to permanent residents than those already permitted change of use by the planning authority.
- That the proposal is not contrary to the zoning objective in the development plan (East Clare LAP) and it would appear that the planning authority assessed the proposal on the basis of the use being Residential – single dwelling rather than multiple housing units which are open for consideration.

6.2 Planning Authority Response to Grounds of Appeal

The following is a summary of the main points raised in the response of the planning authority to the first party appeal:

- That the assertion that the zoning objective was misinterpreted is rejected. Regard was also had to the planning history of the development and other permissions granted. Considered that the proposal, additional to those already permitted would result in a further loss of tourist facilities on lands zoned for Tourism use.

- That the zoning of the site as ‘*Tourism*’ was considered in the assessment of the application. The issue as to whether the application was assessed on the basis of Residential Single Dwelling (permanent occupation) or Multiple Housing Units is considered a moot point.
- That the provisions of the draft plan cannot be taken into account in the assessment.
- That the Rebuilding Ireland document is a high level policy document and that the issue in this case is the appropriateness of proposed change of use on lands zoned for Tourism.
- That the proposal would dilute the tourism accommodation on site and set an undesirable precedent.
- That the development was not originally designed for permanent occupation as reflected in the internal layout and availability of private amenity space. The proposed change of use would result in a poor level of residential amenity for future occupants.

7.0 **Assessment**

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development and Impact on the Tourism Role of the Area
- Residential Amenity Issues
- Other Issues

7.2. **Principle of Development and Impact on the Tourism Role of the Area**

7.2.1. The lands on which the Lake View development is located are zoned ‘*Tourism*’ under the provisions of the *Clare County Development Plan, 2017-2023* which contains a plan that covers the Killaloe municipal district (Volume 3 of the CDP). It is noted that the land use zoning has changed since the assessment and decision of the Planning Authority and the appeal submissions on file, however the site was also zoned ‘*Tourism*’ under the provisions of the previously applicable East Clare LAP.

- 7.2.2. The first party note the fact that ‘*Multiple Residential Units*’ is listed as an open for consideration use on lands zoned Tourism. This remains the case under the *Clare County Development Plan, 2017-2023*. ‘*Residential – single dwelling (permanent occupation)*’ is listed as a use that is Not Permitted on lands zoned Tourism. The exact nature of the proposed development is not in my opinion clear in this case. The first party maintains that the use is clearly within the scope of ‘Multiple Residential Units’, however the proposed development does only involve two units and proposes a change of use of existing units rather than the construction of any new or additional units. I would also note that while the land use zoning matrix makes reference to a Multiple Residential Units land use which is open for consideration it is not clarified whether these units are holiday use or permanent residential use. I would further note the fact that in the case of uses that are Open for Consideration, such uses may be permitted ‘*where the local authority is satisfied that it is in compliance with the zoning objectives, standards and requirements as set out in the County Development Plan.....and will not conflict with the permitted, existing or adjoining land-uses in accordance with the proper planning and sustainable development of the area*’. The compliance of the proposal with the aims of the zoning objective, the tourism role of the area and other relevant development plan policy is considered in more detail in the sections below.
- 7.2.3. Irrespective of whether the proposed development falls within the definition of ‘Multiple Residential Units’ or ‘Residential – Single Dwelling’, the main issue relates to the compatibility of the proposal with the nature of the zonings. The description of the Tourism zoning given in the development plan is that it should ‘*...be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourist’s / holiday makers and visiting members of the public*’. I do not consider that the proposed change of use of existing holiday accommodation to permanent residential use is clearly consistent with this description.
- 7.2.4. The first party contends that there is a current over supply of holiday accommodation in Killaloe and cites an occupancy rate of 28 percent for the Lake View development. It is not, however, clear from the information presented how this 28 percent figure was calculated. If it is derived from the census this was undertaken on a Sunday in April, 2016 so would be reflective of a time of likely low occupation of holiday

housing. I note that Paragraph 4.3.12 of the *Clare County Development Plan, 2017-2023* relates to Holiday Homes and that Objective CPD4.13 of the Plan identifies settlements where there is an oversupply of holiday homes and where only permanent occupancy residential developments will be permitted. These identified settlements (Kilkee, Liscannor and Querrin) do not include Killaloe.

7.2.5. Objective CDP4.13 states that it will be the objective of the plan to support and facilitate the conversion of some holiday home units to permanent homes where the planning authority is satisfied that the conversion will not have a negative impact on the tourism product in the area. On the basis of the information presented I am not clear that there is a very significant underuse of the existing units within the Lake View development. In addition, notwithstanding the fact that the provisions of Objective CDP4.13 seeks to support and facilitate changes of use, it is my opinion that the proposed change of use would not be clearly in accordance with the description of the Tourism zone as given in the development plan.

7.2.6. The appellants have raised issues regarding the consistency of decision making given the fact that the Planning authority granted permission for changes of use of five units in Lake View in 2012 and a further unit in 2015. Clearly these decisions were made by the Planning Authority and not An Bord Pleanála. Notwithstanding this, the change of use of a further two units would mean that eight out of 48 no. houses in the development would no longer be in holiday accommodation use. The appellants cite a figure of 11 percent of the permitted 72 holiday units however this would 17 percent of the permitted houses on site.

7.2.7. I note that the first party appellants have made reference in their appeal submission to the government policy document '*Rebuilding Ireland- An Action Plan for Housing and Homelessness*' and contend that the proposed development would be consistent with one of the objectives of Rebuilding Ireland which is to ensure that the existing housing stock is used to the maximum extent possible. I would however agree with the Planning Authority that Rebuilding Ireland is a high level policy document and that the relevant considerations in this case are the compatibility of the proposal with the zoning of the site. As set out above, I do not consider that the first party has clearly demonstrated that the proposed development, taken in conjunction with other permitted changes of use in the Lake View estate, would be consistent with the Tourism zoning objective for the site, that there is significant

underuse of the existing holiday home infrastructure in this development and that the proposal would not be contrary to the requirement of Objective CDP4.13 that the change of use would not have a negative impact on the tourism product in the area.

- 7.2.8. Finally, I note the fact that the core strategy for the County as set out in Table 2.4 of the Clare County Development Plan, 2017-2023 identifies Killaloe as having a target increase in population between 2011 and 2023 of 156 no. households requiring 11.7 ha. of zoned lands. It is evident from Table 2.4 that more than this amount of land is available over the plan period to meet the target population.

7.3. Residential Amenity Issues

- 7.3.1. The other reason for refusal cited by the planning authority relates to the design and layout of the existing houses and their suitability for permanent residential occupancy. Specifically, the decision of the planning authority highlights the limited extent of living accommodation and private amenity space relative to the number of bedspaces. It is concluded by the Planning authority that the proposed change of use would result in a poor level of residential amenity for future occupants of the dwellings.
- 7.3.2. The floor area of each dwelling is c. 105 sq. metres and the layout comprises three double bedrooms (six bedspaces) with a shared living, dining and kitchen area at first floor level. The shared living accommodation is relatively small for a three bedroom dwelling with the kitchen area measuring c. 7 sq. metres and the shared living room / dining area having an area of c. 23 sq. metres. There are no indicative room size standards presented in the development management section of the development plan, however I consider that the living areas are small for a six bedspace house. I also note that the internal layout is such that there is no provision for a direct access to the rear amenity space without using the door in Bedroom No.2. Overall therefore I would agree with the assessment of the Planning Authority that the internal layout of the dwellings is designed for holiday home use rather than permanent occupation and that the existing layout would result in a poor standard of residential amenity for permanent occupants.

- 7.3.3. With regard to amenity space, the dwellings have a small yard area to the rear of each property. The area of these yards measures c. 25 sq. metres to the rear of the building line. In area terms therefore the private amenity spaces equate to approximately 4 sq metres per bedspace. While no private open space standard is specified in the Clare County Development Plan, a figure of 4 sq. metres per bedspace is in my opinion too low to provide an adequate level of residential amenity for a family sized dwelling in a location such as the appeal site. I also note the fact that the layout of the Lake View development is such that the rear of the sites are accessible from the estate road to the south. I further note that the layout in this area is such that the ground levels are elevated to the south of the site and that clear views are available from public areas over the existing timber rear boundary fences and into the rear amenity areas. I therefore consider that in addition to being too small for the scale of accommodation on site, that the rear amenity spaces are not sufficiently private to provide a good quality of residential amenity and privacy for future occupants. I note that in the case of the previous grants of permission for changes of use in the Lake View development (Refs. P12/570 and P14/335) that Condition No.2 required the construction of a new rear boundary fence to be submitted for agreement. In the case of the appeal site it is my opinion that the ground levels are such that the scope for the construction of a fence of sufficient height to maintain privacy without having an adverse impact on visual amenity is limited.
- 7.3.4. The first party state that there is shared open space available in close proximity to the site in the form of woodlands to the east and the marina area. These areas are not formally designed shared public open space areas dedicated to the Lake View development, however I would agree that between these areas and ancillary open space areas within the development that there is considerable amenity space available.
- 7.3.5. With regard to car parking, the standard set out in the development plan is two spaces per dwelling in the case of three bedroom houses with an additional visitor space per three houses for visitors. The existing layout of the estate provides for 8 no. parking spaces per terrace of six houses. The existing layout is therefore below the standard specified in the plan for car parking for a three bedroom house of permanent occupation.

7.3.6. Objective 4.13 of the Plan states that the conversion of some holiday home units to permanent homes would be supported where it can be demonstrated that both the dwelling and the associated infrastructure (open space provision, car parking, waste water capacity etc.) are of sufficient standard to support the proposed new use. On the basis of the above, I do not consider that the design and layout of the dwelling and associated infrastructure are of a standard that meets development plan standards or that are of a sufficient standard to support the proposed permanent residential use.

7.4. **Other Issues**

7.4.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. Having regard to the above it is recommended that permission be refused based on the following reasons and considerations:

1. That having regard to the design and layout of the dwellings, including the quantum and quality of private amenity space provision, the internal layout of the dwellings and size of shared living accommodation and the availability of car parking, it is considered that the proposed development would result in a sub standard level of residential amenity for future permanent residential occupants of the dwellings. The proposed development would therefore be contrary to Objective CDP4.13 of the *Clare County Development Plan, 2017-2023* and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature of the proposed use, to the extent of permitted changes of use to permanent residential occupation within the Lake View development, to the '*Tourism*' land use zoning of the site and the description of this zoning given in 19.4 of the development plan which seeks to provide for '*structures and activities which are primarily designed to facilitate tourism development*', it is considered that the proposed change of use to permanent residential occupancy would undermine the coherence of holiday home use in the Lake View development, would be contrary to the land use zoning objective and would materially contravene a condition attached to an existing permission, (Condition 21 attached to planning Ref. P03/1032). The proposed development would therefore set an undesirable precedent for further such changes of use and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

31st January, 2017