



An  
Bord  
Pleanála

## Inspector's Report PL08.247814.

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<b>Development</b>	Permission consequent on grant of outline planning permission to (ref OPP 15/615) for the demolition of single storey extension to side of dwelling at no. 7 New Road and construction of 1 no. detached and 6 no. semi-detached two storey dwellings as well as vehicular / pedestrian access from New Road and access roadway including all associated site development works.
<b>Location</b>	No. 7 New Road, Killarney, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	16/337.
<b>Applicant(s)</b>	Reps of the late Mrs. Kathleen O'Conner
<b>Type of Application</b>	Permission consequent on grant of outline planning permission.
<b>Planning Authority Decision</b>	Grant permission.

<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sean O'Brien.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	9 <sup>th</sup> March, 2017.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The proposed development site is located within the urban area of the town of Killarney and to the south of New Road. The site is located approximately 200m from the town centre. The overall area can be described as an inner suburban area which has a variety of uses including commercial, educational and service uses including a Garda station, schools and Government offices, as well as a significant residential element in the area.
- 1.2. The site itself has a stated site area of 0.247 hectares, is generally regularly shaped and is occupied by an existing two-storey house and its substantial rear garden area. The rear garden is significantly private and not overlooked by reason of the existence of mature screening on all site boundaries. The site has the benefit of outline planning permission for the development of 7 houses on the site and public services are available to support the development.

## **2.0 Proposed Development**

- 2.1. Permission consequent on grant of outline planning permission to (ref OPP 15/615) for the demolition of single storey extension to side of dwelling at no. 7 New Road and construction of 1 no. detached and 6 no. semi-detached two storey dwellings as well as vehicular / pedestrian access from New Road and access roadway including all associated site development works, all at No. 7 New Road, Killarney, Co. Kerry.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant permission for the proposed development subject to 21 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The initial planning report considered the proposed development in terms of the information presented in support of the planning application, together with

the planning history associated with the subject site, the Development Plan requirements, internal submissions and third party objections. The report acknowledges that the site has the benefit of a current outline planning permission which was subject to 17 conditions. In principle, the proposed development is considered acceptable but further information was requested with regard to issues relating to Archaeological Impact, compliance with condition 15 of the OPP which related to side development works, condition 12 which related to sustainable urban drainage scheme, condition 15, a Road Safety Audit, condition 17 relates to good site management practices and condition 9 which related to landscaping.

- Following receipt of the response to the FI request, the Planning report acknowledged the submission of reports from the County Archaeologist and the Town Engineer. Clarification was sought with regard to the issue relating to the Road Safety Audit, condition 15 of the OPP and Good site management practices, condition 17 of the OPP.
- The final Planning Report acknowledges the report of the District Engineer who recommended a number of conditions. The report concludes that all issues raised have been addressed and recommends that planning permission be granted subject to conditions.

### 3.2.2. Other Technical Reports

County Archaeologist: An Archaeological Impact Assessment was submitted in support of a previous application, 15/615 and noted the potential for sub-surface archaeological features or strata to be encountered. Pre-development archaeological testing to be carried out across the site and a report submitted prior to any grant of planning permission.

Following receipt of the response to the further information request, including the submission of a pre-development archaeology testing report, the County Archaeologist acknowledges that no archaeology features or strata were recorded during the testing. No further mitigation is required.

Housing Estates Unit: Further information required in relation to a number of issues arising from the submitted plans and particulars.

Biodiversity Officer: Notes that the works relate to the construction of houses within an existing urban streetscape. The report concludes that subject to best practices in environmental management of waste water at construction and operational stage, no significant effects on Natura 2000 sites are considered likely. Hedgerow boundaries should use native planning of Irish provenance.

Town Engineer: Required that all recommendations outlined in stage 1 Safety Audit must be properly addressed prior to approval.

Municipal District Engineer: Following receipt of the response to the clarification request, the District Engineer recommended a number of conditions to be attached to a grant of planning permission.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

There is one third party submission from Mr. Sean O'Brien noted on the Kerry County Council file in relation to the proposed development. The issues raised are summarised as follows:

- The set back of the development to the eastern boundary is raised as a concern in terms of the development potential of the third party property. House no. 7 is 4.2m from the boundary.
- Any first floor windows should be 11m from the boundary they face.
- Information in relation to a number of issues, including utility layout, surface water details, ESB and street layout plans, car parking layout, private amenity spaces, elevations and drawings.

## 4.0 Planning History

### 4.1. Current site:

**PA Ref 15/615:** Permission was granted on 22<sup>nd</sup> February, 2016 permitting the Reprs. of the late Mrs. Kathleen O'Connor outline permission for the demolition of a

single storey extension to side of dwelling at No. 7 New Road and construction of 1 No. detached and 6 No. semi-detached two storey dwellings as well as vehicular / pedestrian access from New Road and access roadway including all associated site development works at No. 7 New Road, Killarney, Co. Kerry.

#### 4.2. Adjacent sites:

**PA Ref 04/204300:** Permission was granted on 31<sup>st</sup> March, 2005 permitting Lynch & Bradley Solicitors permission to part demolish existing house and extension to same with change of use to offices, construction of 2 No. dwelling units at rear of house, refurbish existing apartment and provision of signage.

**PA Ref 06/204541:** Permission was refused on 5<sup>th</sup> April, 2006 refusing Philip O'Connor permission to 1) Demolish 2 existing 2-storey dwelling houses & other single storey structures; 2) Construct a new building to comprise of the following: A) a basement containing 29 car spaces, ESB sub-station, 2 bin storage areas, lift motor room, access for the basement will be via of a car lift, accessible from ground floor; B) public amenity space at ground floor; C) 2 no. offices at ground & 1<sup>st</sup> floor; D) 22 no. apartments as follows:- 3 no. 2-bed apartments & 3 no. 1-bed apartments on ground floor; 5 no. 2-bed & 1 no. 1 bed apartments on 1<sup>st</sup> floor; 5 no. 2-bed & 1 no. 1 bed apartments on 2<sup>nd</sup> floor; 4 no. 2-bed apartments on 3<sup>rd</sup> floor. 3) Construct rooftop gardens & stairs to same on 3<sup>rd</sup> & 4<sup>th</sup> floors; 4) Connect to public foul and storm sewers; 5) All necessary associated external works.

**ABP Ref. No. PL63.224720 (PA Ref 07/204700):** Permission was refused on appeal on 19<sup>th</sup> May, 2008 refusing Philip O'Connor permission for (1) The demolition of two existing two-storey dwelling houses and other single storey structures. (2) The construction of a new building to comprise of the following: (A) a bin storage area and on-site car parking spaces, (B) public amenity space at ground floor level, (C) 2 No. offices at ground and first floor levels and 1 No. office on second floor level and (D) 11 No. apartments as follows: 1 No. two bedroom apartment and 3 No. one bedroom apartments on ground floor level, 3 No. two bedroom apartments and 1 No. one bedroom apartment on first floor level, 2 No. two bedroom apartments on second floor level and 1 No. two bedroom apartment on third floor level. (3) Construction of rooftop gardens to second floor level. (4) Connection to public foul

and storm sewers. (5) All necessary associated external works, for the following reason:

Having regard to the size of this restricted site, the proximity of the proposed four storey development to the site boundaries and the proposals for parking, it is considered that the proposed development would constitute overdevelopment of the site, would seriously injure the residential amenities of adjacent property and would adversely affect the development potential of adjacent lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**ABP Ref. No. PL63.217651 (PA Ref 05/204433):** Permission was refused on appeal on 18<sup>th</sup> September, 2006 refusing Sean and Charles O'Brien permission to demolish dwelling house/structure and construct an apartment block development consisting of:- (i) Block A – 6 No. two bedroom apartments and 1 No. one bedroom apartment. (ii) Block B – 15 No. two-bedroom apartments and 4 No. one bedroom apartments. (iii) Block C – 8 No. two-bedroom apartments and 2 No. one bedroom apartments. (iv) Block D – 15 No. two-bedroom apartments and 4 No. one bedroom apartments. Basement car park containing 59 No. car spaces, 2 No. bin stores, construct service road, footpaths, ancillary areas and services including courtyard lift/stairwells, all at New Road / Coollegrean, Killarney, Co. Kerry, for the following reasons:

1. The proposed development, by reason of its scale, layout, open space provision alongside the River Folly, proximity to boundaries and its unresolved access road to the south of the site, would set a precedent for similar development in the area, would prejudice the development potential of the adjacent sites, would seriously injure the amenities and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development, providing a new access onto New Street, would be premature pending the making of a road layout for the area having regard to the emerging road layout in the area as set out in the draft Killarney Urban Master Plan. The proposed development would,

therefore, constitute disorderly development and be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy Context

### 5.1. National Policy & Guidelines:

The *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* note that in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

### 5.2. Development Plan

- 5.2.1. The Killarney Town Council Development Plan, 2009-2015 is the relevant local policy document pertaining to the subject site. The Board will note that the duration of the Killarney Town Development Plan 2009-2015 has been extended until such time as it is superseded by a Municipal District Plan.
- 5.2.2. The Board will note that the proposed development site has two zonings afforded to it and is located in an area zoned as *'Town Centre Facilities'* with the stated land use zoning objective *'to provide for and improve the development of the Town Centre'*. In accordance with Section 12.3.5.1 of the Plan, use for 'residential' purpose is *'permitted'* within this land use zoning. In addition, part of the site is zoned for Residential purposes. In this regard, the following sections of the Plan are considered relevant:

Chapter 3: Housing:



### Section 3.6: Housing Protection Areas:

Policy HSG-03: It is a policy of the Council:

- a) To preserve the residential distinctiveness and character of established residential communities by the designation of Housing Protection Areas. In general, the Council shall not be in favour, except in exceptional circumstances, the sub-division of:
- b) Existing dwelling houses, located in areas zoned for residential use, into two or more separate dwelling units/apartments, or
- c) Individual residential sites, in areas zoned for residential use, into two or more sites for the provision of extra dwellings on the site, where, such development would lead to congestion of layout, over development of the site and would tend to detract from the residential amenities of properties in the immediate vicinity.
- d) To curtail the change use of existing houses to other uses within such areas except in immediate family circumstances
- e) To extend the Housing Protection Zone to include the Woodlawn Park area (See map of Housing Protection Zone). It is essential that the detached and semi – detached character of the area is preserved with a presumption against terrace style or infill development.

### Chapter 12: Land Use Zoning Objectives and Development Management Standards:

Section 12.7: Requirements for New Residential Developments

Section 12.11: Residential Layout and Design:

Section 12.26: Infill Developments

### 5.3. Natural Heritage Designations

The subject site is located approximately 450m from the Killarney National Park, Macgillycuddy Reeks and Carragh River Catchment cSAC (Site Code 000365). The site is however, within the built up area of the town of Killarney and outside any designated site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a third party appeal against the decision of Kerry County Council to grant permission consequent on the grant of outline planning permission for the proposed development. The grounds of appeal are similar to those raised during Kerry County Councils assessment of the proposed development and are summarised as follows:

- The proposed development as permitted significantly reduces the development potential of the adjacent and larger site because of the proximity of the houses to the site boundary.
- The ground and first floor plans show windows on both ground and 1<sup>st</sup> floor side elevations. It is generally required that opposing windows be not less than 22m.
- The Council has accepted payment of €15,000 to compensate for lack of car parking which is unsatisfactory and will lead to congestion and traffic obstruction during peak times.
- Inadequate public open space provided with restricted private space for houses.
- The development is not in keeping with the town centre zoning and will affect the potential to fully develop adjacent lands.
- The development represents a piecemeal development in the context of the town centre zoning and is premature.
- The development, if permitted, will negatively impact the sale of adjacent lands.

### 6.2. Applicant Response

The applicant has responded to the third party appeal as follows:

- The issue of reasonable separation would be a feature of any design solution presented by the appellant at the design / planning stage for his site.

- It would be impossible to anticipate the proposals for the adjacent site, which have not been made clear in the appeal. It is unlikely that the issue of separation distances referred to would be significant.
- In terms of traffic issues raised, the proposed development has been designed to fully adhere to the requirement of the Planning Authority.
- Sufficient car parking has been provided for residents and visitors.
- Adequate private space is provided for each house.
- The nature of the development is permissible under the Town Centre Zoning and has been designed to comply with same.
- In terms of the adjacent property, it is noted that there are no concrete proposals for same. A high density apartment development was refused by ABP.
- The applicant is confident that the permitted development will not impact on the appellants site.

### 6.3. **Planning Authority Response**

The Planning Authority has not responded to this appeal.

### 6.4. **Observations**

None.

## 7.0 **Assessment**

7.1. Having regard to the nature of the proposed development and the details submitted with the planning application and appeal documents, I conclude that issues arising for consideration should be addressed under the following headings:

1. The principle of the development & the compliance with the conditions of the Outline Planning Permission
2. Issues raised in the Third Party Appeal
3. Other Issues

### 7.2. **The principle of the development & the compliance with the conditions of the Outline Planning Permission**

7.2.1. The Board will note that a valid outline planning permission exists for the proposed development. The subject site is also located within the zoned area of the town of Killarney and the principle of the development has been accepted in light of the grant of outline permission. I am satisfied therefore that the proposed development can be considered as acceptable.

7.2.2. In terms of compliance with the terms and conditions of the outline planning permission I am satisfied that the current proposals is acceptable in terms of the outline, scale, design and dimensions of the houses together with the separation distances as permitted. The Board will note that through the period of assessment with Kerry County Council, the applicant sought to provide evidence of compliance with a number of conditions. I am generally satisfied that the application for permission consequent on the grant of outline planning permission accords with the conditions of the outline and I have no objections to the proposed development in this regard.

### 7.3. **Issues raised by the Third Party Appellant**

7.3.1. The third party appellant has raised a number of concerns in relation to the principle of the proposed development, and mainly relates to the potential impact on the development potential of his lands which adjoin the subject appeal site to the west. I am fully satisfied that the development is acceptable in this regard. In terms of the

concerns regarding the location of windows on the side elevations, the Board will note that these windows serve an ensuite and landing. I am satisfied that the development is acceptable.

- 7.3.2. With regard to the submission in relation to the payment required to compensate for lack of car parking, the Board will note that this was also a condition of the OPP. In addition, the proposed site layout accords with the requirements of the OPP in terms of public and private open spaces. I am further satisfied that the development is acceptable in terms of the town centre zoning afforded to it. Overall, I am fully satisfied that the issues raised by the third party have been fully addressed.

#### 7.4. Other Issues

- 7.4.1. In terms of other issues, I refer the Board to the financial contribution conditions attached to the grant of Permission Consequent. In particular, the Board will note the requirements of the following conditions:

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| Condition 2: | Sum of €20,000 for the upgrading of footpath and public lighting on New Road under Section 48 (2)(C). (Condition 2 of OPP in 2015 required €7,500)                                 |
| Condition 3: | Sum of €21,920 in respect of public infrastructure and facilities. (Condition 10 of OPP provided for undefined sum)  |
| Condition 4: | Bond of €70,000 required. (Condition 16 of OPP provided for sum to be agreed at permission consequent stage)   |
| Condition 5: | Sum of €15,000 for the provision of 3 car parking spaces. (Condition 3 of OPP required €5,000 in lieu of the roadside parking space lost with the development of the service road) |

- 7.4.2. I refer to these conditions for the Boards consideration given the significant rise in the contribution requested since the original grant of outline planning permission on the 22<sup>nd</sup> February, 2016. The wording of condition 2 refers to the provision of public infrastructure and facilities and a special development contribution is required for the upgrade of footpath and public lighting on New Road. The Board will note from the

Development Contribution Scheme that Roads Infrastructure includes ‘Improvements to public lighting Town Centre & Urban District’ while all other references to infrastructure seems to relate to a specific place in the town. In this regard, I am satisfied that the inclusion of a Special Development Contribution condition is acceptable.

7.4.3. I am satisfied that conditions 3 and 4 are acceptable.

7.4.4. In terms of the requirements of condition 5, and while I acknowledge the report on file from the SEE Operations Killarney Municipal District in relation to this condition, the Board should note that the issue of car parking was considered at OPP stage. The SEE considered that the development would result in the loss of one car parking space and not three at OPP stage. Section 2.3 of the Killarney Town Development Contribution Scheme, 2010-2012 (the most current scheme for Killarney) deals with Car Parking Levy and provides that €5,000 is required by way of additional contribution per car parking space required.

7.4.5. I do note that the applicant has not appealed these conditions and as such, their inclusion in any grant of planning permission is considered appropriate.

## **8.0 Recommendation**

8.1. It is recommended that planning permission consequent on the grant of outline planning permission be granted for the proposed development, subject to compliance with the following conditions:

## **9.0 Reasons and Considerations**

9.1. Having regard to the terms and conditions attached to the grant of outline planning permission associated with the subject site, PA ref 15/615, the provisions of the current Development Plan, and the nature of the existing pattern of development in the vicinity, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the general, residential or visual amenities of the area, would not represent a traffic hazard and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, submitted the 14<sup>th</sup> day of April, 28<sup>th</sup> day of July and 21<sup>st</sup> day of November, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. All relevant conditions attached to the grant of outline planning permission associated with the subject site, PA ref 15/615 refers, shall be strictly adhered to.

**Reason:** In the interests of residential amenity.

3. The external finishes of the proposed houses (including roof tiles/slates) shall be in accordance with the plans and particulars submitted in support of the proposed development.

**Reason:** In the interest of visual amenity.

4. 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 or Class 3 of Schedule 2, Part 1 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 extended dwelling and in the interest of the amenities of the area.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

7. The developer shall pay the sum of €20,000 (Twenty Thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect



of the upgrading of footpath and public lighting on New Road. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

8. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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A. Considine  
Planning Inspector  
10<sup>th</sup> day of April, 2017