



An
Bord
Pleanála

Inspector's Report PL08.248189

Development	Construction of 3 no. dwellings with all ancillary site works.
Location	April Avenue, Scrahane, Killarney, Co. Kerry
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/959
Applicant(s)	Adrian Hegarty and Timmy Joe Fleming
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Adrian Hegarty and Timmy Joe Fleming
Observer(s)	None.
Date of Site Inspection	02.06. 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1.1. The appeal site (of stated 0.077 hectares) is located on the northern side of April Avenue, to the western side of Muckcross Road (the N71 National Road) north of Flesk Bridge, approximately 1km south of Killarney town centre, in a predominantly residential area.
- 1.1.2. The surrounding area is characterised by a variety of suburban housing estates, some larger individual dwelling houses (a significant proportion of which are in use as guesthouses or B&B's) and intermittent commercial developments with a notable prevalence of hotel accommodation. The Holiday Inn a three storey hotel is located opposing the appeal site to the south on a corner site of April Avenue and Muckcross Road. The adjoining lands to the west are occupied by row of semidetached two storey dwellings in Cahernane Meadows. The adjoining site to the east hosts a two storey with recessed third floor guesthouse 'Killarney Inn', this guesthouse backs onto the eastern boundary of the appeal site and no formal boundary is in place between the guesthouse and the appeal site. From the plans submitted and my observations on site it appears that the subject appeal site once formed part of the overall 'Killarney Inn' site.
- 1.1.3. The site is rectangular in shape and presently vacant. It is bounded by an approx. 1.8m high solid block wall to its northern, southern and western boundaries, presently there is no eastern boundary in place with open views into the rear of the adjoining B&B. April Avenue is tree lined on both sides with approx. 6 mature trees planted along the northern side of the avenue adjoining the appeal site frontage.

2.0 Proposed Development

- 2.1. The proposal comprises permission to construct:
- Three number, four bedroom, three storey dwelling houses
 - All associated development works.

GFA of the proposed works is stated as 636 sq. m (212 sq. m x 3)

The dwellings have a height of 10.7m

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following a request for Additional Information with respect to (i) height of the proposed dwelling houses, full contiguous elevations required (ii) first floor north facing bedroom windows are not acceptable (iii) proposed boundary treatment between the site and the existing guesthouse (iv) safety assessment of the entrances onto the estate road and (v) site layout plan indicating all proposed services, (ii) Planning permission was Refused for one number reason which states:

'It is considered that the proposed development by reason of height, scale and proximity to the northern boundary would seriously injure the residential amenities of property to the north by reason of overlooking onto rear garden. Therefore, it is considered that the proposed development would set an undesirable precedent for future developments in the area and would be contrary to the proper planning and sustainable development of the area.'

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report supports the draft decision to refuse planning permission. It sets out concerns with respect to height of the dwellings, overlooking from first floor windows to the north and. proximity to boundaries, it is considered the further information request has not been satisfactorily addressed.

3.2.2. Other Technical Reports

Housing Estates Unit: Further Information requested

3.3. Prescribed Bodies

- Irish Water: No objection subject to condition.
- TII: No Observations

3.4. **Third Party Observations**

An observation was submitted to the planning authority. Concerns raised with respect to proximity indicated to Guest House to the east, overlooking, overshadowing and loss of light.

4.0 **Planning History**

4.1. **Reg. Ref. 15/416** Permission Granted for two number dwelling houses, including all necessary ancillary works.

4.2. **Reg. Ref. 07/204831** Permission granted for 4 number apartments. Extension of duration of permission granted to 24/06/2018.

5.0 **Policy Context**

5.1. Sustainable Residential Development in Urban Areas, 2009

5.2. Quality Housing for Sustainable Communities, 2007

5.3. **Development Plan**

The site is governed by the policies and provisions contained in the Killarney Town Development Plan 2009 – 2015.

The site is zoned 'Existing Residential' with the stated land use zoning objective 'To provide and improve residential amenities'. 'Dwellings' are 'Permitted Uses' while 'B&B / guesthouses, hotels' are 'Open for Consideration.'

Paragraph 12.10.4 states: 'Within the town centre a higher density of development may be considered where it is felt that such an infill development would integrate with the streetscape. The development will, however, be required to comply with the standard set out by the Planning Authority in the Development Plan. Higher densities will not be appropriate in every circumstance. Higher densities must not be achieved at an unacceptable amenity loss to the surrounding dwellings and residents of the proposed development'.

Paragraph 12.26.1 states: 'Within the town centre infill development and refurbishment schemes will be required to pay particular attention to the local architectural character and materials used'.

Paragraph 12.26.2 states: 'Development will only be considered if it:

- Will not detract from the character of the area
- Will not be detrimental to the residential amenities of the area
- Will not be prejudicial to the proper planning and development of the area.

Contemporary infill developments will be considered on their own merits.

Other Relevant Sections / Policies: (Excerpts attached as Appendix to this report)

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

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised within the First party appeal from 'teicniuil-priory' on behalf of Adrian Hegarty and Timmy Joe Fleming have been collated under the following headings:

Impact Upon Garden to the North

- The appeal site is contained within a high density mixed development, with a variety of building types, usage and architectural styles.
- Overlooking into adjacent rear gardens is a natural consequence of this type of built up environment
- Any town development, or development within a town boundary will naturally have some 'overlooking' factor.
- 6 Priory Grove has 26 number bedroom windows overlooking directly onto its garden and house.
- Proposal takes cognisance of overlooking issues into the rear gardens to the north by the provision of high level clear glass panels to the bedrooms which are approx. 1.8m from ground level of the bedrooms. No overlooking is possible from these windows. Any other glazing was reduced and specified as to be 'opaque'.

- The subject proposal diminishes the overlooking factor compared with the previous two grants of permission
- The grant of permission for 4 number apartments on this site is live and would give rise to overlooking from balconies facing north and is wholly incompatible with the p.a. reasoning of setting an 'undesirable precedent' within their reason to refuse.
- The subject proposal shows a dramatically reduced impact of overlooking compared to the impact of the other two permitted schemes.
- No cognisance has been taken relating to the betterment of the overlooking issue.

Further Information Request

- Dispute that the F.I request was not satisfactorily responded to.
- Elevation Drg. No. 81-16-310 indicates that the proposed dwellings have less of an overall bulk that that previously granted for the two number dwellings. The height is .88m over that originally proposed but this relates to the highest point of the curved roof. The flat roof aspect of the proposal is .44m below the original approved 2 number dwellings.
- The applicant's agent met with the area engineer on site to resolve issue of sightlines and safe access.

Height

- The proposal has a maximum roof curve height of 10.7m dropping to 9.87m at the lower curve and 9.3mmmmmm over the flat roof.
- The proposal has comparative roof heights to the previously granted proposals on this site and comparable heights to those buildings in the near vicinity.
- The proposed 2 number dwellings permitted on the site (Reg. ref. 15/416) have a height of 9.56m
- The proposed 4 number apartments on the site (Reg. ref. 07/4831) have a height of 9.317m

- The existing Holiday Inn is c. 15m at the apex of the roof.
- The dwelling adjoining in Cahernane Meadows are approx. 8m high
- The Guest House to the east has a height of 8.08m

Precedent

- A precedent has been set for similar types of development in the locality.

The Appeal is accompanied with:

- Photographs
- Site Plans and Various Elevations (Drg. No. 81-16-310)
- Site Location Map showing previous granted development (Drg. No. 81-16-110)
- Copy Plans and 3D Images of 4 number apartments as granted planning permission under Reg. Ref. 07/4831

6.2. Planning Authority Response

- Response received with in respect to BP10 from ABP, relating to relevant planning history, no further comments forthcoming.

7.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Principle of the Development on the Site**
- **Overdevelopment of the Site and Impact Upon Residential Amenity**
- **Appropriate Assessment**

7.1. Principle of the Development on the Site

- 7.1.1. The appeal site (0.077ha) is located within an area zoned with the objective 'Residential' with the objective 'to provide and improve residential amenities' in the Killarney Town Development Plan 2009 – 2015.

There are currently two live planning permissions pertaining to the subject appeal site. A grant of planning permission exists for two number dwellings, under Reg. Ref. 15/416. Also permission was granted under Reg. Ref. 07/204831 for 4 number apartments for which an extension of duration of permission was granted to 24/06/2018.

The proposed development for three number dwelling houses of modern idiom, with associated car parking, on an infill site is acceptable in principle within with this zoning objective, subject to compliance with development management criteria set out in the Development Plan.

7.2. Overdevelopment of the Site and Impact Upon Residential Amenity

- 7.2.1. The planning authority refused planning permission for one number reason namely that: ‘

‘It is considered that the proposed development by reason of height, scale and proximity to the northern boundary would seriously injure the residential amenities of property to the north by reason of overlooking onto rear garden. Therefore, it is considered that the proposed development would set an undesirable precedent for future developments in the area and would be contrary to the proper planning and sustainable development of the area.’

The proposal has a site coverage of 43% which is in accordance with the site coverage standard of up to 50 % coverage for residential set out in paragraph 12.9 of the Killarney Town Development plan 2009 – 2015. The density of 39.9 / ha while high is within the range 30 – 40 per hectare stipulated in paragraph 12.10 relating to residential densities. This being said I have concern with respect to the proximity of the three number dwellings to the northern boundary and height of the dwellings proposed.

7.2.2. Private Amenity Space / Rear Garden Depth

Paragraph 12.12 Private Open Space of the Killarney Town Development Plan 2009 – 2015 sets out that all dwellings shall be provided with a minimum of 48 sq. m of private open space in the town centre area. It also sets out that a minimum depth of 11 m shall apply. Exceptions are included, only, for developments for elderly persons or persons with a disability or other specific requirements.

The three four bedroom dwellings with a stated GFA of 212sq. m per dwelling have a rear garden depth of only 4m and while it is indicated on the site layout plan submitted on the 28th September 2016 (Drwg. No. 81-16-102) that the private amenity space associated with each dwelling ranges from 85 - 89 sq. m from my measurements the private open space, to the rear of the building line of each house, ranges between 48 sq. m – 50 sq. m. This I consider a generous assessment.

While cognisance is had to the site constraints and I note and agree with the planning officer's opinion in their assessment of Reg. Ref. 15/416 that 'to insist on an 11m back garden on this site would be impractical and would result in this site remaining vacant.'

In that case private amenity space of 75 sq. m with rear garden depths of 4.5m – 4.6m was considered acceptable. I am of the opinion that albeit the Development Plan allows for exceptions to the requirement for a rear garden depth of 11m that a reduction in the permitted depth and useable private open space from that granted permission would be wholly unacceptable.

Given the northern orientation of the rear gardens, the height of the proposed dwellings and 4 m depth of garden proposed, the proposed private open space / garden area would be almost permanently in shadow with the exception of late

evening. I would therefore have concern with respect to limited amenity afforded to future residents.

I also have concern with respect to the proposed flat roof at first floor, indicated planted 'for screening', albeit not indicated as a first floor terrace (approx. 22 sq. m). Large 'fire escape' frosted glazing and cladding on lower portion of the windows from bedrooms two and three, facing north, open onto this space. I would have concern that this area could be used as a terrace and therefore give rise to overlooking to the north.

I have had regard to the 'site plans and various elevations' submitted with the appeal. However, from a review of the previous permitted proposals on the site (as per the history plans and drawings attached by the p.a. to the file) it is evident that the 4 number apartments permitted under Reg. Ref. 07/4831 had a height of 8.8m and the rear building line was 6.967m from the rear / northern boundary wall. Measures were incorporated to ameliorate overlooking to the north by way of glass blocks, opaque glazing and a mesh screen.

The two number two storey houses permitted under Reg. Ref. 15/416 had a maximum height of 9.5m and amenity space of 75 sq. m with rear garden depths off the northern boundary of 4.6m and 4.5 m respectively. These dwellings are designed to a high architectural specification and do not overlook to the north. Windows to the rear are off set and frosted glazing to upper floor bathroom and landing window opens prevent overlooking.

7.2.3. Height

The proposed dwellings at 10.7m dropping to 9.87m at the lower curve and 9.3m over the flat roof is not comparable with the height of the adjoining guesthouse "Killarney Inn' or the two storey dwellings to the west in Cahernane Meadows. It is significantly higher; regard is had to the Drwg. No. 81-16-110 submitted to the planning authority on the 24th January 2017.

Given my review of the previous permitted proposals on the appeal site, I do not agree with the first party that the proposal has comparative roof heights to the proposed two number dwellings permitted on the site (Reg. ref. 15/416) and or the permitted four number apartments (Reg. ref. 07/4831). I am of the opinion that an increase in height by some 1.9m to 10.7m is significant and would give rise to a

visually domineering presence along April Avenue given the proximity of the proposal to the front building line and to the rear of the 'Killarney Inn' guesthouse. Cognisance is had to the three storey 'Holiday Inn' (approx. 15m to apex) adjoining to the south, however, this site is a corner site and the building is well set back from its site boundaries.

I consider it unsatisfactory that the layout plan submitted does not detail the rear extension permitted to the 'Killarney Inn' guesthouse. From history documents on file it would appear that the party boundary is less than 2 m from the existing western rear extension of Killarney Inn / Guesthouse, with first floor windows facing west. The proposed development is approx. 2 m from the eastern party boundary. Therefore, I consider significant overbearing and overshadowing impact would arise.

I consider it that the height, scale and massing of the proposed development would seriously injure the residential amenities of adjoining property to the east, thus being contrary to the zoning of the site.

7.2.4. Overlooking

It is submitted by the first party that no cognisance has been taken relating to the betterment of the overlooking issue. It is contended that the live grant of permission for four number apartments would give rise to overlooking from balconies facing north. Regard is had that the subject proposal seeks to overcome issue of overlooking into the rear gardens to the north by the provision of high level clear glass panels to the bedrooms which are approx. 1.8m from ground level of the bedrooms.

From my review of the permitted development on the site I am of the opinion that the subject proposal is not any significant improvement in terms of reduced overlooking. Indeed, it would give rise to enhanced perceived overlooking and the inclusion of a north facing, first floor planted flat roof, which is undesirable. The design of the two permitted schemes had particular regard to overlooking. The apartment scheme proposes balconies to the front south facing with mesh screening to the north elevation. The two dwellings permitted on foot of Reg. Ref. 15/416 have been specifically designed so as not to give rise to overlooking.

7.2.5. Visual Impact

The design of the proposed dwellings is to a high standard with an aesthetically pleasing modern finish proposed to the front façades. However, I am of the considered opinion, that the proposed development would represent significant overdevelopment of this site. It would give rise to an overbearing appearance and would be visually obtrusive when viewed from April Avenue and especially from adjoining properties to the east.

7.2.6. Conclusion

The height and proximity to site boundaries, the need for substantial opaque glazing and high level windows, inadequate rear garden depth, inadequate private open space, overbearing impact and visual impact all stem from the general sense that the proposal represents overdevelopment of this notably constrained and restricted site.

The proposed development would seriously injure the residential amenities of adjoining properties and would disregard the zoning objective of the Killarney Town Development Plan 2009-2015, 'To provide and improve residential amenities'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. **Appropriate Assessment (AA)**

- 7.3.1. Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment (incl. Flesk River) SAC Code 000365 and Killarney National Park SPA (NPWS Code 004038) are located within 1 Km of the appeal site.

The AA screening report carried out by the planning officer concludes that there is no potential for significant effects to Natura 2000 sites resulting from the development.

- 7.3.2. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development, infrastructure in place, urban location and separation distances involved to adjoining Natura 2000 sites. It is also not

considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1.1. I recommend that the decision of the planning authority be upheld and planning permission be refused to the proposed development.

9.0 Reasons and Considerations

1. Having regard to the constrained and restricted nature of the site, to the scale, bulk and height of the proposed development, notwithstanding extant permissions, it is considered that the proposed development would represent significant overdevelopment of this site, would give rise to an overbearing appearance and would be visually obtrusive, when viewed from April Avenue and adjoining properties in particular from the east of the site. The proposed development would seriously injure the residential amenities of adjoining properties and would be contrary to the zoning objective of the Killarney Town Development Plan 2009-2015, 'To provide and improve residential amenities'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to its overall layout and design, it is considered that the proposed development would provide a limited quality of residential amenity for future residents by virtue of the short depth of rear garden space, its northerly aspect and concerns of overshadowing. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Fiona Fair
Planning Inspector
27/06/2017