



An
Bord
Pleanála

Inspector's Report PL09.248327

Development	Six apartments and site works.
Location	Rear of 2, 3 & 4 Duke Street, Athy, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/281
Applicant(s)	Michael Purcell
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First party
Appellant(s)	Michael Purcell
Observer(s)	None
Date of Site Inspection	11 th July 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located in Athy town centre, Co. Kildare within the Architectural Conservation Area of the town. It is located to the rear of no's. 2, 3 and 4 Duke Street, one of the principle streets in Athy town.
- 1.2. No's. 2, 3 and 4 Duke Street are three storey terraced buildings with commercial uses at ground floor and long narrow back gardens. The AIB bank is located to the north-east of the site and is a detached modern building. The River Barrow runs to the east of the site. Cromaboo bridge (a Protected Structure) crosses the River Barrow just beyond the AIB bank. The southern boundary comprises a public car park which also houses the Council's sewage pumping station and a detached structure which is used as a surgery. Two other terraced dwellings with similarly long back gardens form the west boundary of the site. Further to the west are more recently constructed two storey townhouses which face onto Convent Lane. Access to the public car park and service lane feeding the Council's pumping station is from Convent Lane.
- 1.3. Further west of the site across from Convent Lane is another surface car park and further south is a very modern church. Parking appears to be somewhat haphazard in the area of the church and Convent Lane.
- 1.4. The site itself is currently in an overgrown and disused state. Pedestrian access from the site to Duke Street is via a narrow laneway arched over by No.4 Duke Street. Vehicular access is via the public car park which is accessed from Convent Lane. The public car park is accessed via a barrier.
- 1.5. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposed development is for a block of apartments. It is proposed to develop 6 no. apartments over three storeys with surface parking, bicycle storage, and private communal space.
- 2.2. Each apartment is stated as being a minimum of 82.6sq.m and will contain a minimum of 6sq.m of storage. The development has a maximum height of 11.7m and a gross floor area of 647.6sq.m.

- 2.3. The design of the building incorporates three apex roofs of natural roof slates. A zinc standing seam cladding is used at second floor, while a natural stone cladding is used at ground and first floor.
- 2.4. Following a request for Further Information, balconies were incorporated and changes were made to the private and public open spaces. The car parking reduced from 12 spaces to 9. Changes appear to have been made to the overall red line and the actual location of the apartment footprint has been moved further south.
- 2.5. A pedestrian access via a gate is provided for from Duke Street, and vehicular access is provided through the existing public car park to the south.
- 2.6. The application was accompanied by a Planning Report, Flood Risk Assessment, a Stage 1 Appropriate Assessment Screening Report, Stormwater Calculations, as well as drawings.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for two reasons:

1. *Having regard to the location of the site in a backland area in Athy Town Centre, it is considered that the proposed development by reason of its scale, design, orientation and proximity to site boundaries, would seriously injure the amenities and depreciate the value of property in the vicinity, would prejudice the orderly development of adjoining lands, and would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development, creating an additional vehicular entrance onto the laneway to the rear of the subject site, would endanger public safety by reason of traffic hazard and obstruction of road users. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Considers that site can be easily viewed from Cromaboo bridge and surrounding town centre locations, although not easily viewed from Duke Street.
- Considers the design rationale is generally acceptable for a river side setting, and that there are positive architectural features, but considers further analysis of the visual impact is required having regard to its location in the Architectural Conservation Area (ACA).
- Considers the scheme generally complies with the Council's requirement for apartments, but further information is required in relation to private space.
- Notes that the Athy Development Plan promotes development of backlands, but there are concerns that the site is being developed in isolation of the adjoining sites and it may impede development of adjoining sites – masterplan could be developed.
- Notes the vehicular access passes through a public car park – applicant to comment on the future delivery of the proposed new street and what measures can be taken to mitigate traffic hazard.
- Notes Flood Risk assessment report states the site consists of a highly vulnerable development and lies within the 1 in 100 year flood zone, but report concludes that sufficient measures have been taken to ensure development is not subject to flooding.
- Further Information is requested with respect to 21 items including visual impact and photomontages, provision of balconies, open space, consider provision of a masterplan for the backland area, objective RP4 new street, car park details, and archaeology matters.
- The applicant responded to the request for Further Information. Concerns were still expressed that the development of the site in isolation would negatively impact on the adjoining sites and prejudice comprehensive

development of the site, and traffic department continue to have concerns with access onto laneway which will create a traffic hazard.

- Considers design of the apartment block is high quality, but there are fundamental concerns regarding siting and development at this location with respect to development on adjoining sites, and it would be preferable for the sites to be developed as one.
- Recommends refusal of permission.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** FI Requested. No update following response.
- **Transportation:** Recommends refusal.
- **Water Services:** No objection subject to conditions
- **Environment:** No objection subject to conditions
- **CFO:** Applicant to obtain a Fire Certificate
- **Heritage Officer:** No objection.

3.3. Prescribed Bodies

- **Department of Arts, Heritage and the Gaeltacht:** Submission made and issues formed part of Further Information request.

3.4. Third Party Observations

No submissions received.

4.0 Planning History

There are a number of planning applications associated with the subject site.

- **KCC Ref. Reg. 09/300022:** Permission granted in February 2010 for car parking to accommodate 30 cars.

- **ABP Ref. 228621, KCC Ref. Reg. 07/300030:** Permission refused by the Board in October 2008, for the erection of a four storey block comprising 8 apartments, retail unit, office and 11 car parking spaces. Two reasons for refusal were that the development would constitute piecemeal, un-coordinated development that would prejudice orderly development of adjacent lands, and the development by reason of its massing, scale and design in the ACA would constitute a visually incongruous intervention that would detract from the visual amenities and townscape.
- **ABP Ref. 216883, KCC Reg. Ref. 04/300028:** Permission refused by the Board in September 2006 for the demolition of sheds and the construction of 11 apartments in four storeys and car park. Two reasons for refusal: the first referred to the location of the site in a central urban area and the objective of the planning authority to prepare a Masterplan and to create a new urban street - it was considered that the proposed development, by reason of its scale, form and design and proximity to site boundaries, would prejudice the orderly development of adjoining lands, and the second considered that the proposed development was seriously deficient with respect to parking and access arrangements.

5.0 Policy Context

5.1. Athy Town Plan 2012 – 2018

Chapter 4 refers to Housing, Chapter 2 to the Core Strategy, Chapter 5 to the Town Centre, Chapter 7 to Movement and Transport, Chapter 11 to Recreation and Amenity, Chapter 12 to Architectural and Archaeological Heritage, Chapter 14 to Urban Design and Opportunity Areas, and Chapter 15 to Development Management Standards.

In October 2016 a variation was made to the Plan with respect to realigning the Southern Distributor Road, removing the Northern Distributor Road Study Corridor, removing sections of the New Town Street and revising the policy in relation to a pedestrian/cyclist bridge over the River Barrow.

The subject site is located in the Town Centre and is zoned 'Town Centre' on Map 5.1. A new roads objective is indicated to the south of the site.

The Core Strategy in Chapter 2 includes **policy CS8**:

To encourage the appropriate use and re-use of town centre backland and under-utilised sites to promote the regeneration of areas in need of renewal.

Section 4.6.3 refers to Backland Development. It states that '*Backland development will generally only be considered where the proposed development forms part of a comprehensive plan for development of the entire backland area*'.

Policy HP19 states:

To permit backland development generally only where development is carried out in a comprehensive redevelopment of the backland to secure a co-ordinated scheme. Each application will be considered on its merits.

Chapter 5 includes **policy TC4**:

To promote appropriate residential development within the town centre and encourage the concept of 'Living Over the Shop' in the town centre.

The Plan notes the considerable undeveloped backland areas to the rear of buildings on Duke Street and recognises that there are a number of opportunity sites located within the town centre.

Policy PR2 with respect to Movement states:

To encourage the improvement of the area surrounding the Dominican Church.

Policy RP4 (including change Variation no.1) states:

To support the construction of new town centre streets and acquire land to facilitate construction.

Map 11.1 indicates a walking and cycling route alongside the Barrow with access through the public car park.

Map 12.1 of Chapter 12 identifies the site as being within the Zone of Archaeological Potential. Map 12.2 identifies the site being within Area 2 of the Architectural Conservation Area. Table 12.2 lists the Record of Protected Structures which

includes a substantial number of structures in close proximity to the site, including Cromaboo Bridge, St. Dominic's Church on Convent Lane, No. 1, 3 and 5 Duke Street, and the Lamp Post at the west end of Cromaboo Bridge.

Table 13.1 identifies Protected View VP1 being views of the River Barrow upstream and downstream from Cromaboo Bridge.

Section 14.5.3 notes that large underutilised vacant backland plots exist to the rear of Duke Street and seeks to maximise the development potential of these expansion areas in an integrated manner.

Policy UDF7 states:

To allow for the intensification of the town centre by utilising undeveloped, backland and brownfield land within or adjacent to the town centre area.

Figure 14.3 Urban Design Framework indicates a Proposed Landmark Building in the general area facing the river at Duke Street as well as a secondary public space to the south of the subject site and the location of the future main vehicular link.

The site is considered to be located in the Character Area 'Dominican Lands' in Figure 14.5.

Chapter 15 refers to Development Standards. In Table 15.9 it is stated that a minimum of 2 car parking spaces per unit are required for apartments with two bedrooms.

5.2. Natural Heritage Designations

The River Barrow and River Nore SAC (Site Code 002162) is located 30m to the east of the site. Ballyprior Grassland SAC (Site Code 002256) is located c.9.5km west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged against the Council's decision to refuse permission. In summary, it states:

- The design has been carefully considered to produce a form that is sympathetic to its environs. Notes that the Planner's Report considers the proposal to be of "high architectural quality" and acceptable to the Heritage Officer, Water Services and Environmental Sections.
- Previous refusal on the site (ABP Ref. 228621) has informed the subject request – proposal is smaller in terms of mass, scale and design. Details and materials present a high quality façade towards important vantage points along the river. Consider that the rear elevations of Duke Street present a low quality façade towards the river at present. Proposed development would greatly lift the view.
- Applicant states that a masterplan was prepared to support the planning application. The applicant has aggregated the rear gardens of 2, 3 & 4 Duke Street to date. It has not been possible, despite attempts, to enlarge the development further by inclusion of the AIB Bank rear garden at 1 Duke Street, or the rear gardens of 5 & 6 Duke Street.
- The inability of the applicant to further aggregate his landholding to date should not be used to prevent otherwise acceptably designed development to take place, considering the masterplan demonstrates one possible solution to the orderly development of the remaining lands. It should be seen that the balance of the lands remains developable, and the current proposal does not prejudice these lands.
- A previous application for a car park for 30 cars was granted permission – that development utilised the same access point and would have been subject to much greater traffic movements.
- The formerly proposed inner relief street and associated bridge is no longer part of the Plan for Athy. Notwithstanding this, the proposal has been designed to ensure that any such route is not prejudiced by the development.

6.2. Planning Authority Response

The Planning Authority state that they have no further comment.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Orderly Development of adjoining lands
- Residential Amenities
- Traffic and Parking
- Appropriate Assessment

7.2. Orderly Development of adjoining lands

The first reason for refusal refers to scale, design, orientation and proximity to site boundaries seriously injuring the amenities, depreciating the value of property, and being prejudicial to orderly development of adjoining lands.

The applicant as part of the appeal states that despite efforts he has not been able to include the lands to the rear of the AIB bank and no's. 5 & 6 Duke Street. The site to the rear of the AIB bank would appear to have development potential. It is relatively well tended and is fully enclosed with vehicular access both north and south and currently has no buildings or structures in situ. However, I would consider it unreasonable to preclude the redevelopment of the subject site due to the unavailability of the other sites.

In response to the Further Information, the applicant submitted a high level masterplan to include the other sites. The masterplan is based on the earlier version of the plan layout of the subject site submitted to the Planning Authority, prior to the response to Further Information. The red line boundary appears to have changed between the initial version and the revised one, following the response to Further Information. The change to the red line appears to be only on the northern boundary to the rear of No.3 Duke Street and indicates a reduced site area, therefore, I do not

consider that this could prejudice any third party or be a reason for refusal, should the Board consider granting permission.

Notwithstanding this, the masterplan submitted has not adequately demonstrated that a comprehensive and co-ordinated scheme for the entire area is not prejudiced by the subject proposal and is contrary to policy HP19.

I accept that the applicant states that despite efforts he has been unable to include the other areas, but I have concerns that the proposal as currently designed would prejudice the orderly development of the area by virtue of its scale and proximity to the site boundaries. I accept that the masterplan is a high level potential solution only, but I am not satisfied that the masterplan as proposed, demonstrates that a solution is possible with the current design for this site, and as it stands does prejudice the orderly development of adjoining sites. Having regard to the proximity to the site boundaries, the development potential of the site to the rear of the bank is limited particularly having regard to its waterside location.

Furthermore, the masterplan being based on the earlier version of the proposal, indicates the footprint being further north than it is now proposed to be, resulting in less space for private open space, footpaths and parking etc. to the south.

In conclusion, I am not satisfied that the applicant has demonstrated that the proposal would not prejudice the future development of the adjoining areas, and consider the proposal as currently designed would not result in orderly development of the adjoining areas by virtue of its scale and proximity to the boundaries.

7.3. Residential Amenities

I consider that the overall design concept of the building and materials proposed are of very high architectural quality and would provide an improvement to the current view from the various vantage points along the river and from Cromaboo bridge.

However, I have a number of concerns relating to the scale of the building which I consider will impact negatively on the amenities of future occupants of the proposal.

This Planning Authority's first reason for refusal included a reference to amenities. I also have concerns for amenities of future residents of the development, as well as amenities of occupiers of existing properties. Following the change to the red line, the number of parking spaces reduced from 12 to 9. The Development Plan requires

2 spaces per apartment which the original design complied with, but which reduced in response to the Further Information request and no reason for the change was provided.

While I accept that the development is proposed for a town centre and a case could be made for reducing the number of car parking spaces, I have other concerns with the proposal, in particular the open space provisions as detailed in the Landscape Plan. The Children's Play Area is located in the north-east of the site beside the refuse storage area. Very little light or sunshine will be available. The actual square footage of the Children's Play Area is also not clear. There appears to be a kerb or edging around the area. The report which accompanied the response to Further Information does not clarify if the stated area for the Children's Play Area of 55.2sq.m, includes the area inside or outside of this edging. I would also consider that the boundary wall between the Children's Play Area and the AIB bank would result in the area being cold and damp and not conducive to children playing.

In addition, the "sitting area" to the north-west of the site appears to have a gate shown halfway across the area on the Landscape Plan, and includes the bicycle parking area. It is unclear if the bicycle parking area is included in the patio area square footage figures provided by the applicant.

It is unclear if the private open space to the east and west of the proposal is for ground floor use only, or if the green area around the parking spaces are included in the calculation of the overall open space areas.

In conclusion, I am not satisfied that the proposal provides adequate qualitative and quantitative open space for the amenities of future residents.

7.4. Traffic and Parking

The second reason for refusal refers to an additional vehicular entrance onto the laneway endangering public safety. The applicant refers to the fact that the Council granted permission for 30 car parking spaces previously in this location which would have been subject to much greater traffic movements.

The applicant has provided details of how the traffic would enter and exit the development site itself. I have concerns with the fact that the vehicular access is through a public car park which will see continuous traffic movements throughout the

day. The exit from the site runs alongside the 2m high east wall of the Council's Pumping Station. I consider that the view for motorists, as well as pedestrians, in the area is obscured by the high wall.

The applicant identified an alternative access which runs between the doctor's surgery, the Pumping Station and Priory Court as part of the response to Further Information. This was identified as an alternative access in the previous planning permission for the 30 no. car parking spaces, when it was considered that the new town street could potentially run south of the site. No other information has been provided with respect to the availability of this site, and it is currently blocked off between the west of no.6 Duke Street and the Priory Court development.

In addition, the Athy Town Plan indicates the location of public open space and indicative walking and cycling routes. A public open space is indicated in the car park. One walking and cycling route is identified alongside the Barrow to the east of the site which is indicated as being accessed through the car park. Having regard to the Council's plans for walking and cycling routes and policy PR2 to encourage the improvement of the area surrounding the Dominican Church, it is likely that there will be an increase in pedestrian movement in the area. The addition of a vehicular access with obscured views would present a traffic hazard in the public car park.

As noted above the parking provision was reduced from 12 spaces to 9 with no explanation from the applicant, but it appears to be to accommodate the red line change and the open space redesign. While I accept that the site is located in the town centre, I would have concerns that the reduction may result in parking overspill into other areas.

In conclusion, I consider that the proposed access through the public car park with obscured views would constitute a traffic hazard and would endanger public safety.

7.5. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that planning permission should be refused permission, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site in a backland area in Athy Town Centre, it is considered that the proposed development, by reason of its scale and proximity to site boundaries, would seriously injure the amenities of existing residents of the area and future occupants of the development, and would prejudice the orderly development of adjoining lands and would therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development, creating an additional vehicular entrance onto the public car park would endanger public safety by reason of traffic hazard and would therefore be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Inspectorate

17th July 2017