



An
Bord
Pleanála

Inspector's Report PL08.248504

Development

(1) Permission to carry out alterations and extensions to bed and breakfast, more particularly (a) construct 5 bedrooms at 2nd floor level, (b) construct private living quarters at ground and 1st floor level and (c) carry out alterations at 1st floor level and (2) Retention permission for the conversion of 8 bedrooms to 4 holiday suites complete with associated fire escapes all in accordance with plans and particulars submitted.

Location

Scrahane, Muckross Road, Killarney, Co. Kerry.

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

16/1238

Applicant

Brendan Cleary

Type of Application

Permission & Permission for Retention

Planning Authority Decision

Grant subject to conditions

Type of Appeal	Third Party v. Decision
Appellant(s)	Neil & Marie Burke and Ted Kiely
Observer(s)	None.
Date of Site Inspection	31 st July, 2017
Inspector	Robert Speer

1.0 Site Location and Description

The proposed development site is located along the western side of Muckcross Road (the N71 National Road), approximately 800m south of Killarney town centre, in a predominantly residential area north of Flesk Bridge. 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 site itself has a stated site area of 0.16 hectares, is rectangular in shape, and is presently occupied by a front-gabled, two-storey, detached property which operates as 'Bed and Breakfast' known as 'Slieve Bloom Manor'. It includes a parking area to the front, which is accessed from an existing entrance arrangement shared with the 'Fuchsia House' Bed & Breakfast to the immediate north, whilst the rear of the property includes a yard area, a small amenity area, bin storage, and associated outbuildings / stores. To the north, the site adjoins the grounds of an existing 'Bed and Breakfast' whilst the lands to the south are occupied by a two-storey, detached dwelling house set within a substantial plot. The site is bounded by the Muckcross Road to the east whilst the adjoining lands to the west are occupied by existing two-storey dwelling houses which form part of the adjacent Cahernane Meadows housing development.

2.0 Proposed Development

The proposed development, as initially submitted to the Planning Authority, consisted of the following:

- The alteration and extension of the existing 'guesthouse' to include for:
 - a) The provision of 5 No. additional bedrooms through the construction of a new second floor extension to the rear of the existing building.
 - b) The construction of a two-bedroom self-contained apartment unit / private living quarters over part of the ground and first floor levels.
 - c) The carrying out of associated alterations to the internal layout of the structure together with changes to the elevational treatment,

including the provision of 2 No. new externally mounted fire escape stairways.

- The revision of the existing on-site car parking arrangements in order to provide for additional car parking facilities.
- Associated site development works.

However, in response to a request for further information, the subject application was amended to include for the following:

- The retention of the conversion of 8 No. bedrooms into 4 No. self-contained one-bedroom holiday suites (each with a kitchenette and lounge area) complete with associated external fire escapes.

In addition, the design of the proposed development was revised to incorporate the provision of projecting angular windows at second floor level within the southern elevation of the proposed extension whilst new screening measures were also introduced atop the proposed and existing fire escapes.

Notably, the applicant also submitted revised public notices which replaced the reference to 'guesthouse' with 'Bed and Breakfast'.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 19th April, 2017 the Planning Authority issued a notification of a decision to grant permission & permission for retention of the proposed development subject to 11 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Refers to the payment of a development contribution in the amount of €11,220.

Condition No. 3 – Requires any damage to the public footpath / roadway consequent on the proposed development to be made good at the developer's expense.

Condition No. 4 – Refers to drainage works.

Condition No. 5 – Refers to the submitted plans and particulars, external finishes, and requires the submission of revised plans, for the written agreement of the Planning Authority, prior to the commencement of development, which provide for the following amendments:

- a) The omission of any widening of the existing window serving Bedroom No. 5.
- b) The omission of the window serving Bedroom No. 9.
- c) The amalgamation of Bedroom Nos. 9 & 10 into a single guest bedroom.

Condition No. 6 – Prohibits any use of the proposed two-bedroom apartment as overnight commercial guest accommodation without a prior grant of planning permission.

Condition No. 7 – Refers to construction management / best practice as regards the prevention of any discharge of contaminated waters during construction works.

Condition No. 8 – Refers to construction hours.

Condition No. 9 – Refers to the management of construction and demolition waste.

Condition No. 10 – Refers to the submitted plans and particulars.

Condition No. 11 – States that the 4 No. holiday suites are to be used solely as holiday accommodation and not as permanent places of residence.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report noted that the proposed development would be permissible on lands zoned as 'Existing Residential' and proceeded to state that the submitted proposal would not give rise to any significant negative impact on the amenity of neighbouring properties, traffic safety, ecological considerations, archaeological and cultural

heritage, or water quality etc. The report subsequently concluded by recommending that further information should be sought in respect of a number of issues, including the adequacy of the proposed car parking arrangements, the provision of private open space, the relationship of the proposed development relative to adjoining properties, the use / control of the proposed external fire escapes, and the nature of the current usage of the property.

Following the receipt of a response to a request for further information (including the submission of new public notices), a further report was prepared which stated that the issues raised had been satisfactorily addressed and that the concerns with regard to the holiday suites had been resolved as these were to be retained as part of the revised planning application. It was also noted that the proposed holiday suites would give rise to less traffic due to longer holiday stays and that the imposition of a suitable condition would regulate the use of same. With regard to the visual impact of the proposal it was considered that the proposed extension would not be visually obtrusive when viewed from Muckcross Road and would be in keeping with the developments to the north and south. In terms of the potential impact on neighbouring properties, it was considered that the amended proposals submitted in response to the request for further information had reduced the potential for overlooking of the adjacent property to the south and that whilst some overlooking of the rear garden area of the Fuchsia Guesthouse to the north was already attributable to the existing floor first windows, this would not be exacerbated by the proposed second floor extension as the windows within its north-facing elevation would be located at a high level and would only serve a corridor. In addition, reference was made to the proposals to utilise screen walls along the fire escapes. This report subsequently concluded by stating that the subject site could accommodate the scale of development proposed and that the submitted proposal involved the extension of an established use before ultimately recommending a grant of permission subject to conditions.

3.2.2. Other Technical Reports:

Fire Authority / Building Control Officer: No objection, subject to compliance with fire safety requirements.

3.3. Prescribed Bodies

Health Service Executive / Environmental Health Officer: States that separate sanitary accommodation is recommended for food workers.

Transport Infrastructure Ireland: No observations.

Fáilte Ireland: States that whilst the subject application is described as involving works to what is referred to as a 'Guesthouse', the property in question is not registered as a 'Guesthouse' with Fáilte Ireland. In this regard it is submitted that Section 8(1) of the National Tourism Development Authority Act, 2003 requires that Fáilte Ireland, as the National Tourism Development Authority, establish and maintain a register of guesthouses in Ireland whilst Section 34(1) of the Tourist Traffic Act, 1939, as amended, states the following:

'that it shall not be lawful for the proprietor (or occupier) of any premises to describe or hold out or permit any person to describe or hold out such premises as a Guesthouse unless such premises are registered in the register of Guesthouses and such proprietor / occupier is registered in that register as the registered proprietor of such premises. Renewal of registration is required annually'.

It is further stated that in order to use the term 'Guesthouse', a business must register the premises as such which also requires compliance with the minimum standards required at the time of registration. The unlawful use of the word 'Guesthouse' is treated very seriously by Fáilte Ireland and, therefore, as the premises in question is not registered as a 'Guesthouse' under Section 34(1) of the Tourist Traffic Act, 1939, as amended, the Planning Authority is requested to refuse permission for the proposed development.

3.4. Third Party Observations

A total of 4 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on the amenity of neighbouring properties by reason of overlooking, loss of privacy, overshadowing, overbearing appearance, loss of

views, noise and nuisance (particularly arising from the use of the external fire escapes for socialising, smoking etc.)

- The overall scale and height of the proposed development is excessive and out of character with the area.
- Devaluation of property attributable to a loss of amenity.
- The proposed extension will place unnecessary strain on already overburdened services in the area.
- The submitted proposal represents an overdevelopment of the site and would set an undesirable precedent for similar developments at other properties.
- The proposal is contrary to the proper planning and sustainable development of the area.
- The site notice was not legible from the public road.
- The inadequacy of the proposed car parking arrangements on site.
- Traffic safety concerns and the need for a Road Safety Audit.
- The design of the proposed apartment unit (and the long-term apartments / 'holiday suite' lets) does not comply with the '*Sustainable Urban Housing: Design Standards for Apartments, 2007*'.
- Failure to consider Part M (Access for the Disabled) of the Building Regulations as required by the County Development Plan.
- The design of the proposed development does not comply with current Fire Safety Regulations.
- No details have been provided of the proposed drainage arrangements, with particular reference to surface water drainage.
- The submitted drawings are inaccurate and do not reflect the layout and usage of the existing building on site.
- There are discrepancies / omissions in the submitted application which should have been invalidated.
- The description of the premises as a Guesthouse is incorrect and misleading to the public.

- The need for details of any proposed landscaping
- Inadequate private open space provision.
- The use of the accommodation as long-term residential units / tenancies as opposed to short-term tourism lets.
- The existing and proposed accommodation does not accord with the standards required by Fáilte Ireland.
- Concerns with regard to the possible future erection of rooftop solar panels thereby increasing the height of the structure.
- The existing 'holiday suites' are used as apartments / long-term tenancies and there are concerns that the proposed development will be used for similar purposes.

4.0 Planning History

On Site:

PA Ref. No. 06204633. Was granted on 16th January, 2007 permitting Brendan & Teresa Clery permission to revise the site boundaries at Slieve Bloom Guest House, Muckross Road, Killarney, Co. Kerry.

On Adjacent Sites:

PA Ref. No. 06204603. Was granted on 13th December, 2006 permitting Brendan and Teresa Clery permission to construct 5 No. town houses and 2 No. apartments at Cahernane Meadows and Slieve Bloom Guesthouse, Muckross Road, Killarney, Co. Kerry.

5.0 Policy Context

5.1. National and Regional Policy

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.

The *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015’* (which update the *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007’*) provide detailed guidance and policy requirements in respect of the design of new apartment developments. Notably, where specific planning policy requirements are stated in the document, the Minister intends that such requirements must take precedence over policies and objectives of development plans, local area plans or strategic development zone planning schemes. Furthermore, these guidelines apply to all housing developments that include apartments, whether public or private. The updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types and sizes – including households with a child or children, students, older people and an increasingly mobile workforce. They also seek to ensure that, through the application of a nationally consistent approach, new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens.

5.2. Development Plan

Killarney Town Council Development Plan, 2009-2015:-

Land Use Zoning:

The proposed development site is located in an area zoned as *‘Existing Residential’* with the stated land use zoning objective *‘To provide and improve the residential amenities of existing residential areas. The existing residential character of this area should be retained’*. Within this land use zoning use as a *‘Bed and breakfast / guesthouse’* is *‘open for consideration’*.

Explanatory Note: Within these areas there shall be a moratorium on multiple housing or apartment schemes (2 or more residential units) and should not affect infill development, renovations and replacements. This means that applications for multiple residential development will not normally be permitted, except where they replace previously permitted development (live permissions only) consisting of the same or a higher number of units. Generally, the subdivision of a dwelling into two or more units will not normally be permitted. Subsequently the subdivision of a site into two or more sites will not normally be permitted.

Other Relevant Sections / Policies:

Chapter 7: Tourism:

Section 7.6: Strategic Approach to Tourism Development

Section 7.7: Strategic Framework

Section 7.8: Strategic Objectives:

- To encourage future expansion of accommodation capacity, the provision of properties of a high quality standard, and in niche areas which are not already well-supplied, such as health tourism

Policy Statement: TOUR 01:

- a) To support the implementation of the Regional Tourism Plan for the South West, 2008 - 2010 with the aim of increasing visitor numbers, increasing spend per visitor, and reducing issues of seasonality.
- b) To promote the sustainable development and enhancement of Killarney and the Killarney – Tralee area, as major tourism and transport centres in the South West, focussing on Killarney's role as an important business, accommodation and heritage centre with ready access to numerous activity and outdoors based amenities.
- c) To enhance and expand the tourism function of the Town to ensure it maintains its key role as an economic driver in the area while maintaining a balance between economic success and protection of the local environment.
- d) To encourage and support increased coordination, cohesion and linkages between agencies such as Fáilte Ireland (South West Region), Waterways

Ireland, Kerry County Council, the Regional Fisheries Board, the Department of Communications, Marine and Natural Resources and the Office of Public Works (OPW).

- e) To promote and facilitate new festivals and activities in the Town particularly emphasising its role as a family friendly town, while maintaining high standards of environmental management and ensuring that street activities, fireworks etc. do not impact negatively on local character, the environment, or wildlife habitats

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

Section 12.20: Apartments

Section 12.46: Tourist Accommodation Signage

Section 12.64: Commercial Guest Accommodation:

Commercial guest accommodation in the form of guesthouses, bed & breakfasts and hostels are normally allowed in residentially zoned areas. The amenities of existing residential areas should be preserved and improved.

Development of commercial guest accommodation shall be provided with amenity open space within the site, exclusive of car parking spaces. The Planning Authority will require adequate off-street car parking facilities at a rate of one space per guest bedroom and one space for private use. Building lines, access, service roads, footpaths, landscaping, etc. shall be provided as required for housing developments.

N.B. 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.

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development seeks to provide for a number of self-contained living units in an uncoordinated and haphazard fashion with little regard to the national standards for apartment living as set out in the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*'.
- The subject proposal would result in an overdevelopment of the site and would set an undesirable precedent for further such development.
- The development, if permitted in its current form, would have a significant and negative impact on the residential amenities of adjacent properties by reason of overlooking, overshadowing, an overbearing appearance, and visual impact.
- The proposed development, by reason of its overall height, scale, bulk and proximity to adjacent residential properties, would represent a significant intensification of use on site and would be visually intrusive.
- Following an examination of the submitted drawings, and having regard to the on-going daily use of the existing building, it would appear that the property may have already been subdivided into a number of self-contained uses potentially comprising 4 No. holiday suites and 2 No. other self-contained units. In this respect it is submitted that the proposal to construct an independent apartment to the rear of the property would actually involve the provision of a seventh self-contained accommodation / living unit within the overall development. Accordingly, it is submitted that the internal haphazard arrangement of rooms and their associated functions, including upper floor access via internal and external stairways, would suggest that the proposed development is intended to facilitate the operation of a number of self-contained apartment units which would necessitate compliance with the relevant qualitative standards and assessment pursuant to the applicable policy provisions.

- The proposed development site is zoned as *'Existing Residential'* in the Killarney Town Development Plan, 2009-2015 and whilst the provision of commercial guest accommodation in the form of guesthouses, bed & breakfasts and hostels is normally permitted in residentially zoned areas, Section 12.20.1 of the Development Plan states that *'in general apartments will only be considered in the town centre area. Apartment development will not be considered in established residential areas'*. The Plan also states that *'it is important that apartment developments are kept small in nature'* whilst it is of further relevance to note that the apartment standards set out in Section 12.21 of the Plan have since been superseded by the provisions of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'*. In addition, Policy HSG-03 of the Plan states that the Planning Authority will not be in favour, other than in exceptional circumstances, of the subdivision of existing dwelling houses (located in areas zoned for residential use) into 2 No. or more separate dwelling units / apartments.
- Sections 12.12.1 and 12.64.2 of the Killarney Town Development Plan, 2009 set out the private / amenity open space requirements for residential units and commercial guest accommodation respectively.

An assessment of the applicable planning policies identifies a number of difficulties with the subject proposal, particularly in relation to the quality of the development proposed and compliance with the relevant standards necessary to ensure that the residential amenities of existing and future residents are protected and enhanced. Overall, it is submitted that the proposed development lacks the necessary services and facilities to ensure a quality scheme, including the provision of public and private open space.

- The applicant has submitted that the self-contained units shown on the available drawings consist of 'holiday suites' which are used to facilitate longer-term stays, however, it is considered that these 'suites' actually comprise apartment units which fall within the definition of *'build to let units for mobile persons'* as defined in the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* and, therefore, they must comply with the qualitative standards set out in those

Guidelines. Accordingly, it is submitted that the proposed holiday suites must comply with the minimum standards required for 1-bedroom units to accommodate mobile persons. In this regard, minimum unit size, dual aspect design, private open space provision, internal storage and communal open space standards would all apply.

The proposed development is entirely deficient as regards the relevant qualitative standards, does not seek to preserve or enhance existing residential amenity, is contrary to the provisions of the Development Plan, and does not accord with the proper planning and sustainable development of the area.

- The existing building is located only 1m from the northern site boundary and it is this proximity, when taken in combination with the proposal to construct a third storey, which is of particular concern to the appellants. Furthermore, the new fire escape intended to serve the third storey is to be positioned alongside the northern site boundary with no provision for any separation distance or buffer area. In this respect there are serious concerns that the proposed fire escape will be used to access the second floor bedroom accommodation in a manner similar to the existing fire escape stairs on the southern elevation of the building which provides access to the holiday suites. In addition, there are concerns that the proposed fire escape may be used as an outdoor amenity area in the evenings in the absence of any other private open space provision.
- Given the proximity to the site boundary, it is considered that the height of the proposed development has the potential to result in the overshadowing of the adjacent 'Fuchsia Guesthouse'. In this respect it should be noted that the Fuchsia Guesthouse has a conservatory located to the rear of the property which is intended to benefit from natural sunlight during the day (along with its rear garden area).
- The proposed development has the potential to result in the overlooking of the adjacent properties to the north and south. Not only does the proposal include for the construction of a third storey, but it also provides for the insertion of windows at first floor level within the southern and northern elevations of the

existing building. These new windows will be located only 1m from the (northern) site boundary and will directly overlook both the conservatory and rear garden area of the Fuchsia Guesthouse.

- Whilst the design of the proposed development provides for the use of angled windows within the southern elevation of the proposed extension to serve the second floor bedrooms, these windows will nevertheless directly overlook the rear garden area of the neighbouring dwelling house to the immediate south.
- The proposed three-storey construction will extend above the roof line of the existing dwelling house whilst the bulk and scale of the extension will be exacerbated by its flat-roofed design which will in turn contribute to the resultant overbearing impact that will be experienced by the neighbouring properties.
- The visual impact of the proposed development will be exacerbated by the lack of landscaping on site and the harsh treatment of the space to the front of the house which is required to accommodate car parking. This car parking area also serves to dominate the aesthetics of the development and prevents the provision of any soft landscaping or meaningful public open space on site, contrary to the open space requirements of the Development Plan.
- The proposed development will be visually obtrusive when viewed from Muckcross Road and this impact will be exacerbated by the bulk of the external fire escapes.

6.2. Applicant's Response

- The Board is advised that several aspects of the grounds of appeal are factually incorrect.
- The proposed development does not involve the provision of a number of self-contained residential / living units. The 'holiday suite' element has arisen in response to the changing demands / requirements of tourists as evidenced by the rise in self-service accommodation such as 'Air BnB' and the increasing popularity of hostel-type services. Indeed, it is well known that the traditional guesthouse / bed & breakfast format of accommodation is in steady decline.

- The existing premises was previously registered as a guesthouse until 2002 and has since operated as a Bed & Breakfast. The applicant decided to delist the premises from Bord Fáilte in order to allow him greater operational freedom and specifically to allow him to shorten the season as he wished.
- The subject proposal will not overlook the Fuchsia Guesthouse in any way and the proposed windows have been altered significantly to ensure that there is no overlooking of the neighbouring property to the south. In addition, all of the windows facing towards Fuchsia House will be positioned at a high level relative to the floor.
- The flat-roofed design of the proposed development will ensure that there is no impact on adjacent property by reason of overshadowing. It should also be noted that Fuchsia House is almost 2m higher than the applicant's property and will continue to be c. 1m higher than the proposed development.
- The conservatory to the rear of Fuchsia House does not have the benefit of planning permission.
- The surrounding area is populated by hotels, guesthouses and other commercial premises.
- Fuchsia House is three-storeys in height and thus it would not be unreasonable for the applicant to expect that permission would be forthcoming for the construction of a further storey to his property.
- Whilst the lands to the immediate south are occupied by a two-storey dwelling house, the proposed development will only extend 1m over the ridge line of same.
- The suggestion that the subject proposal will have an overbearing impact on the residential amenity of the area is rejected.
- The proposed fire escape is required solely to comply with TGD B: 'Fire Safety' and can be relocated to the eastern end of the second floor extension in order to exit onto the first floor flat roof and onwards to ground level.
- The suggestion that the existing premises has been subdivided is rejected. The layout of the premises is as shown on the submitted plans and is typical of a property which has grown over the years.

- There would be no commercial sense to the subdivision of the property:
 - The yield from 5 No. self-contained apartments on a monthly basis would be significantly less than that likely to be generated from 14 No. guest units (i.e. 420 No. bed nights per month).
- The living room, kitchen, utility and overhead bedrooms to the rear of the property identified by the appellants have been used by the applicant and his family over the years.
- The applicant wishes to retire and his son (Mr. Jonathon Cleary) will take over the business. Mr. Jonathon Cleary does not intend to reside on site and thus use of the domestic element of the existing premises will cease upon construction of the proposed development, although the applicant and his wife will reside in the new apartment unit.
- The proposed apartment will be for the sole use of the applicant and in this respect it is submitted that the Development Plan did not envisage a situation where a retiree should not be accommodated within their own property. Indeed, it is considered that Policy HSG-03 has been drafted to accommodate such a scenario.
- It is reiterated that the existing premises has not been subdivided and in this regard it should be noted that following an inspection of the property by a representative of Kerry County Council, no Warning Letter or Enforcement Notice was issued.
- The proposed development is sensitive to the surrounding area and has taken cognisance of the concerns raised in the submissions with the layout having been revised accordingly.
- The proposal accords with the proper planning and development of the area.

6.3. Planning Authority's Response

None.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The nature of the proposed development
- The principle of the proposed development
- Overall design and layout / visual impact
- Impact on the amenities of surrounding properties
- Appropriate assessment

These are assessed as follows:

7.2. **The Nature of the Proposed Development:**

Concerns have been raised in the grounds of appeal as regards the nature and intended use of the proposed development, with particular reference to the 4 No. holiday suites, the retention of which has been included in the subject application in response to the request for further information issued by the Planning Authority. In this respect it has been submitted that the existing holiday suites are already in use as self-contained apartment units whilst the layout of the remainder of the living accommodation within the existing 'Slieve Bloom Manor' Bed & Breakfast would also lend itself to use as 2 No. other self-contained residential units. When taken in conjunction with the foregoing, it has been asserted that the provision of a further self-contained apartment as part of the proposed development could potentially give rise to a total of 7 No. self-contained units on site which would clearly be distinct from a 'Bed & Breakfast' operation and thus would necessitate compliance with the

relevant qualitative standards (including the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015'*) and a planning assessment pursuant to the applicable policy provisions.

In response to the grounds of appeal, the applicant has rejected the suggestion that the existing building has been subdivided into a series of self-contained units and has asserted that following an inspection of the premises by a representative of Kerry County Council, the Planning Authority was satisfied with the property and thus did not issue a Warning Letter or an Enforcement Notice. In further support of the foregoing, it has been submitted that any subdivision of the property in the manner suggested by the appellants would not make commercial sense as the monthly yield from 5 No. self-contained apartments would be significantly less than that likely to be generated by 14 No. guest rooms. With specific reference to the retention of the existing 'holiday suites', it has also been stated that this element of the overall development proposal has arisen in response to the changing demands / requirements of the tourism industry as evidenced by the rise in the provision of self-service accommodation such as 'Air BnB' and the increasing popularity of hostel-type services whilst the traditional guesthouse / bed & breakfast format is in decline. In effect, the case has been put forward that the proposed development does not involve the provision of any self-contained residential / living units (save for that proposed for the sole occupation / use of the applicant and his family) and instead represents the extension and alteration of the existing 'Bed and Breakfast' operation.

Having conducted a site inspection, and following a review of the available information, in the first instance it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. In this regard I would also advise the Board that it appears that the subject premises was previously inspected / investigated by the Planning Authority and that no further action was held to be warranted as regards its operation. Furthermore, it is of relevance to note that the assessment of the subject proposal undertaken by the Planning Authority would appear to be satisfied that the existing 'holiday suites' are utilised as longer-term guest accommodation as distinct from self-contained residential units utilised as a permanent and primary place of residence. Therefore, whilst I would acknowledge the legitimacy of the appellants' concerns in relation to any existing unauthorised

residential usage of the subject site, and although the holiday suites could be construed as amounting to a self-contained living unit given the presence of sanitary and cooking facilities (i.e. a kitchenette) within each suite (*N.B.* it was also observed during the course of my site inspection that the various suites would each appear to have had a dedicated letterbox), the Board is obliged to assess the development proposal set out in the subject application and the investigation of any incidences of unauthorised development is a matter for the Planning Authority. Similarly, with regard to the suggestion in the grounds of appeal that the proposed development will give rise to the provision of additional self-contained living units, it is my intention to assess the subject proposal on the basis of the description set out in the application documentation, including the public notices. It is also of relevance to note that in the event of a grant of permission, and should the developer fail to comply with the terms and conditions of any such grant of permission, the Planning Authority will be empowered to commence enforcement proceedings in respect of any incidence of unauthorised development or breach of condition, including (but not limited to) any failure to develop the subject proposal as an extension of the existing Bed and Breakfast.

N.B. By way of clarity, I would advise the Board that in response to the request for further information issued by the Planning Authority (and seemingly arising from concerns expressed in a submission received from Fáilte Ireland), the applicant has submitted revised public notices which have substituted the reference to 'guesthouse' with 'Bed and Breakfast'.

7.3. **The Principle of the Proposed Development:**

Having regard to the established use of the subject site as a 'Bed & Breakfast' which offers paying guests overnight accommodation on a commercial basis, in my opinion, the proposed development of 5 No. additional bedrooms (identified as Bedroom Nos. 10-14 on Drg. No. 165-08-06 Rev. A received by the Planning Authority on 7th March, 2017) represents a complementary and ancillary extension / expansion of the existing use on site and thus is acceptable in principle. Similarly, I am inclined to accept that the retention of the conversion of 8 No. bedrooms into 4 No. 1-bedroom holiday suites could be considered to be compatible with the established use of the subject site, however, it should be emphasised that these suites should only be used to accommodate longer-term stays by visiting tourists /

patrons in line with the applicant's submissions and that any usage of same as conventional apartments / residential units for rental purposes etc. would not be considered to be ancillary to the primary use of the property as a 'Bed & Breakfast' and would be unacceptable.

In relation to the proposed construction of a two-bedroom self-contained apartment unit / private living quarters over part of the ground and first floor levels to the rear of the property, I would advise the Board that this element of the proposal should be considered having regard to the wider implications of the overall development for the operation of the existing business premises. In this respect it should be noted that the proposed development provides for a change in the business model / usage of the property in that the premises will no longer offer a traditional 'Bed and Breakfast' service whereby the operator of the enterprise will reside on site. Instead, the submitted proposal would appear to involve a scenario in which there will be no permanent residency of the operator of the 'Bed and Breakfast' on site. By way of explanation, I would refer the Board to the applicant's submission wherein he has indicated an intention to retire from the business (although he will continue to reside on site in the proposed new apartment unit) whilst the operation of the 'Bed & Breakfast' will be taken over by his son who does not intend to reside on site.

In my opinion, whilst the changing of the business model of the existing 'Bed & Breakfast' operation is of limited significance in planning terms, I would suggest that it does have implications as regards the wider acceptability of the proposed apartment unit. In this regard it is clear that the proposed apartment will not be linked to the operation of the existing (and proposed) guest accommodation and will instead function as an entirely separate entity / place of permanent residence. This absence of any inter-relationship is potentially problematic and I would have reservations as regards the precedent such a development could set.

I am inclined to suggest that the proposed apartment unit should be assessed strictly as a self-contained residential unit given its separation from the commercial aspect of the property and thus the relevant provisions of both national and local planning policy should be applied. Accordingly, it should be noted that the proposed development site is zoned as '*Existing Residential*' in the current Killarney Town Development Plan and that within these areas there is to be a moratorium on multiple housing or apartment schemes (2 or more residential units). More notably,

Section 12.20.1 of the Development Plan specifically states that apartments will generally only be considered in the town centre and that apartment development will not be considered in established residential areas whilst the subdivision of existing residential units shall be discouraged in predominantly residential areas. Therefore, in view of the foregoing, and having regard to the site context in an established residential area, it would appear that the development of the proposed apartment unit would be contrary to the relevant provisions of the Town Development Plan.

7.4. Overall Design and Layout / Visual Impact:

The proposed development involves the alteration and extension of an existing Bed & Breakfast and includes for the construction of a new second floor extension to the rear of the existing building which will provide for 5 No. additional guest bedrooms. It is this aspect of the overall proposal which is perhaps of most significance in terms of its potential visual impact as the proposed third storey will extend above the ridge line of the existing building on site and thus will be visible in part from Muckross Road. Notably, the proposed mono-pitched / flat-roofed construction is somewhat at variance with the established pattern of development both on site and in the surrounding area, although I would acknowledge that the height of the new extension is stepped between that of the adjacent properties to the immediate north and south. On balance, whilst the proposed second floor extension will be visible to some extent from Muckross Road, having regard to the site context, including its location in a built-up area and the surrounding pattern of development which is characterised by a variety of building styles, in my opinion, this visual impact is not of such significance as to warrant a refusal of permission.

With regard to the overall scale, height and massing of the proposed second floor extension when viewed from within the adjacent properties to the immediate north and south, I would have serious concerns that the proposed development will have an unacceptably overbearing impact and will at least give rise to a perception of being overlooked, particularly in relation to the neighbouring property to the north given the proximity of the construction to the shared site boundary. In my opinion, the introduction of a three-storey building alongside a significant extent of the northern site boundary (although within the footprint of the existing construction) will have a visually overbearing influence on the adjacent property in light of the overall

height of the proposal and the limited separation distance available (notwithstanding the presence of limited screen planting within the grounds of Fuchsia House).

In terms of the wider design, I would suggest that the subject proposal represents a continuation of the somewhat piecemeal and haphazard approach to the development of the site and in this regard I refer in particular to the internal layout and access arrangements to the existing guest accommodation. For example, it would appear that Bedroom Nos. 6-9 at first floor level will be reliant on access either through an existing ground floor kitchen area or via an entirely separate entrance arrangement from the southern elevation of the building (and over the private patio area intended to serve the proposed apartment unit). Similarly, the multiplicity of external fire escapes, including the additional route proposed to serve the second floor guest accommodation, is not ideal and in this respect I would acknowledge the concerns of the appellants as regards the potential for the misuse of these areas to impact on the amenity of neighbouring property (*N.B.* On the day of my site inspection the fire escape serving the holiday suites proposed for retention was observed to be openly used as a smoking area). In addition to foregoing, I would also draw the Board's attention to Section 12.64: '*Commercial Guest Accommodation*' of the Killarney Town Development Plan which requires commercial guest accommodation to be provided with amenity open space within the site, exclusive of car parking spaces. In this respect it should be noted that the proposed development does not include for any meaningful or useable amenity / open space provision (save for that which is intended to serve the proposed apartment unit) and thus I would have reservations that the subject proposal represents an overdevelopment of the application site.

In relation to the construction of the proposed apartment to the rear of the existing building, it is necessary to consider the detailed design of same having regard to the requirements of both the Development Plan and the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015*'. In this respect it is of particular relevance to note that where specific planning policy requirements are stated in the Guidelines, the Minister intends that such requirements take precedence over the policies and objectives of development plans. Indeed, Section 2.10 of the Guidelines states that it is a specific planning policy requirement that statutory development plans do not set target minimum

average floor areas or requirements for additional communal facilities (e.g. common rooms or gyms) or any other aspect of apartment design that do not accord with the requirements set out in the guidelines. Therefore, in accordance with Section 1.7 of the Guidelines I propose to assess the subject proposal as regards compliance with the relevant planning policy requirements set out in the Guidelines pertaining to the following matters:

- Internal space standards for different types of apartments, including studio apartments
- Dual aspect ratios
- Floor to ceiling height
- Apartments to stair / lift core ratios
- Storage spaces
- Amenity spaces including balconies/patios
- Room dimensions for certain rooms

Internal Space Standards / Apartment Floor Area:

It is a specific planning policy requirement of the Guidelines that the minimum apartment floor areas previously specified in the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007*' continue to apply as follows:

- 1 bedroom apartment Minimum 45m²
- 2 bedroom apartment Minimum 73m²
- 3 bedroom apartment Minimum 90m²

In this respect I would advise the Board that the 1 No. two-bedroom apartment proposed has a stated floor area of 82.5m² and thus exceeds the minimum requirements of the Guidelines.

Dual Aspect Ratios:

The amount of sunlight reaching an apartment significantly affects the amenity of its occupants and therefore it is a specific planning policy requirement of the Guidelines that in urban locations the minimum number of dual aspect apartments to be

provided in any single apartment scheme will be 50%, although in certain circumstances such as on inner urban sites, near to city or town centres, the foregoing requirement may be reduced to an absolute minimum of 33% whilst a further relaxation may be permissible where it is proposed to refurbish an older building in a constrained urban context.

The subject proposal involves the subdivision of an existing building in a built-up area, however, it has a dual-aspect and includes a south-facing elevation which provides for the ground floor living space and 1 No. first floor bedroom to receive direct sunlight for some part of the day. Accordingly, the proposed development accords with the requirements of the Guidelines.

Floor to Ceiling Height:

The Guidelines state that floor-to-ceiling height affects the internal amenities of apartments (in terms of sunlight / daylight, storage space, and ventilation) and that this is of most significance at ground level where the potential for overshadowing is greatest, although it is also noted that ground level floor to ceiling height will also influence the future adaptability of individual apartments for potential alternative uses, depending on location. Whilst it is acknowledged that minimum floor to ceiling heights must accord with the Building Regulations requirement of 2.4m, the Guidelines further assert that a greater standard should be applied in respect of ground floor apartments and thus it is a specific planning policy requirement that ground level apartment floor to ceiling heights should be a minimum of 2.7m (*N.B.* The foregoing are considered to be minimum requirements).

Although no sectional drawing of the proposed apartment unit has been submitted, from a review of the submitted drawings it would appear that whilst the floor to ceiling height at first floor level within the proposed apartment will marginally exceed the minimum requirement of the Building Regulations, the floor to ceiling height on the ground floor will be notably less than the absolute minimum specific planning policy requirement of 2.7m set out in the Guidelines. Therefore, this aspect of the design of the proposed apartment does not accord with the Ministerial requirements.

Apartments to Stair / Lift Core Ratios:

Given the nature and limited scale of the development proposed, the subject proposal satisfies the requirements of the Guidelines in this regard.

Storage Spaces:

Internal Storage:

The Guidelines state that new apartment developments should include adequate provision for general storage and utility requirements in order to accommodate household utility functions such as clothes washing and the storage of bulky personal or household items. In this regard I would refer the Board to the specific planning policy requirements for minimum storage areas as appended to the Guidelines which state that the minimum storage space requirement for a two-bedroom apartment is 6m². Notably, this storage provision is to be in addition to kitchen presses and bedroom furniture (although it may be partly provided within these rooms provided it is also in addition to the minimum aggregate living/dining/kitchen or bedroom floor areas). The Guidelines also state that no individual storage room within an apartment should exceed 3.5m².

From a review of the submitted drawings, it is apparent that the overall floor area of the proposed apartment unit considerably exceeds the minimum requirement of the Guidelines and thus it would seem reasonable to conclude that adequate storage space could be provided within same, however, whilst the 'Schedule of Apartment Areas' included on Drg. No. 16-058-05 Rev. A (received by the Planning Authority on 7th March, 2017) makes reference to the provision of 6m² of internal storage area, no specific proposals are shown for the provision of dedicated internal storage areas (*N.B.* Section 3.21 of the Guidelines states that storage should be additional to bedroom furniture and thus the proposed wardrobe areas would not appear to satisfy this requirement). Accordingly, in view of the foregoing, the development as proposed does not comply with the specific planning policy requirements of the Guidelines as regards the provision of internal storage space.

Refuse Storage:

Whilst it is regrettable that no details have been provided of any proposals for refuse storage, I would concede that as the proposed apartment will be accessed through the adjacent garage area it is likely that it will be able to avail of this storage space to some extent, although this has not been expressly stated in the application documentation.

Amenity Spaces:

Private Amenity Space:

It is a specific planning policy requirement of the Guidelines that adequate private amenity space be provided in the form of gardens or patios / terraces for ground floor apartments and balconies at upper levels. In this respect I would advise the Board that a two-bedroom apartment is required to be provided with a minimum floor area of 7m² of private amenity space whilst consideration must also be given to certain qualitative criteria including the privacy and security of the space in question in addition to the need to optimise solar orientation and to minimise the potential for overshadowing and overlooking.

With regard to the subject proposal, from a review of the submitted site layout plan (Drg. No. 16-058-02 Rev. A received by the Planning Authority on 7th March, 2017), it is apparent that the private open space provision for the proposed apartment unit will encompass an existing 16m² ground level patio to the immediate front (south) of same in addition to a lawn area measuring 56m² positioned to the rear of the overall site adjacent to guest car parking. Whilst I would accept that the overall quantity of private open space provision considerably exceeds the minimum guideline requirement and that it will also benefit from a southern aspect, I would have some reservations as regards the qualitative nature of same. In this respect I would advise the Board that the spaces in question are not free from undue observation by occupants of the overnight guest accommodation and are not only accessible to the occupants of the proposed apartment. Indeed, the proposed patio area would appear to provide ground level access to Bedroom Nos. 6-9 of first floor level guest accommodation.

Communal Amenity Space & Children's Play:

The Guidelines state that the provision and proper future maintenance of well-designed communal amenity space is critical in meeting the amenity needs of residents, with a particular emphasis being placed on the importance of accessible, secure and usable outdoor space for families with young children and for less mobile older people, and in this respect there is a requirement for a minimum of 7m² of public communal amenity space to be provided per two-bedroom apartment.

Given the scale of the subject proposal, I would suggest that it is not necessary to provide any communal / public open space to serve the proposed apartment unit, although this would perhaps place an increased emphasis on the need for adequate private open space provision.

Room Dimensions for Certain Rooms:

Having reviewed the submitted drawings, I am satisfied that the overall design of the proposed apartment unit accords with the required minimum floor areas and standards (including the dimensions of certain rooms) as appended to the Guidelines (with the exception of internal storage provision as has been referenced earlier in this report).

Overall Design of the Proposed Apartment Unit:

On the basis of the foregoing, it is apparent that certain aspects of the design of the proposed apartment unit, with specific reference to the inadequacy of the floor-to-ceiling height at ground floor level, the inadequate provision of identifiable internal storage space in the apartment, and concerns with regard to the refuse storage arrangements, do not comply with the minimum requirements of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015'*. However, given the limited scale of the development proposed, and as it involves the partial conversion and extension of an existing structure, I am inclined to suggest that it would be appropriate in this instance to avoid an overtly rigid application of the design standards set out in the Guidelines. In this regard I would refer the Board to the provisions of Section 5.9 of the guidance which states that *'depending on individual circumstances, certain elements should be applied flexibly by the local authority or An Bord Pleanála in response to an acceptable design solution for which a case is made by an applicant, subject to appropriate application of the relevant Building Control standards'*. Whilst I would accept that the applicant has not specifically acknowledged that the design of the proposed apartment does not fully meet all of the requirements of the Guidelines and thus has not provided a rationale for any alternative compensatory design solutions, it is my opinion that this omission does not in itself serve to preclude the Board from the consideration of any potential compensatory features which are an integral part of the wider design. For example, given the floor area of the proposed apartment, it

would seem feasible to satisfy the necessary internal storage space requirements by way of condition whilst the proposed refuse storage arrangements could perhaps also be addressed by condition in the event of a grant of permission.

Therefore, whilst aspects of the proposed apartment design do not strictly accord with the minimum requirements of the Guidelines, the Board may wish to consider if the proposal provides for adequate compensatory features which would provide the occupants of the unit with a satisfactory level of residential amenity. However, in my opinion, given the nature of the proposed apartment unit, the use of which will be unrelated to the operation of the guest accommodation / Bed & Breakfast, I am inclined to suggest that the failure to provide suitable dedicated private open space is of particular concern.

7.5. **Impact on the Amenities of Surrounding Properties:**

Concerns have been raised in the grounds of appeal that the proposed development will have a detrimental impact on the amenity of neighbouring properties by reason of overlooking and overshadowing. In this respect specific reference has been made to the inclusion of an externally mounted fire escape on the northern elevation of the proposed development in addition to the proposed fenestration arrangements which will face directly towards the Fuchsia Guesthouse.

Having reviewed the available information, whilst I would acknowledge that the high-level windows proposed within the northern elevation of the second floor extension will only serve an access corridor (as opposed to guest bedrooms), given the proximity and orientation of same relative to the neighbouring property, I would have serious concerns that these aspects of the proposal will give rise to an unacceptable degree of overlooking of the rear garden area of the adjacent Fuchsia Guesthouse with an associated loss of privacy. Similarly, it is my opinion that the proposal to insert new fenestration (and to widen an existing window) to serve bedroom accommodation at first floor level within the north-facing elevation of the existing building will also serve to undermine the amenity and privacy of the adjacent property. In addition, having observed the existing fire escape serving the first floor holiday suites being used as a smoking / socialising area etc. during the course of my site inspection, I am inclined to acknowledge the legitimacy of the appellants' concerns as regards the potential for the similar usage of the external fire escape

proposed to be provided alongside the northern site boundary as part of the subject development.

With regard to the potential for overlooking of the existing dwelling house to the immediate south of the application site, I would refer the Board to the amended proposals submitted in response to the request for further information which have revised the design of the second floor extension in order to angle the proposed bedroom windows away from the existing residence. Given the site context in a built-up area where some degree of overlooking would not be unexpected, I am inclined to suggest that these revisions have satisfactorily addressed the potential for undue overlooking of the adjacent property to the south.

In terms of the potential for the overshadowing of neighbouring property, having regard to the positioning of the application site to the south of Fuchsia House, in addition of the height and proximity of the proposed second floor extension to the northern site boundary, it is my opinion that the proposed development would give rise to an unacceptable loss of daylight / sunlight to that property. Furthermore, it seems likely that the overall design, height and proximity of the proposed construction would serve to undermine the development potential of Fuchsia House.

7.6. **Appropriate Assessment:**

From a review of the available mapping, including those contained in the Killarney Town Development Plan, 2009 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is not located within any Natura 2000 designation although it is situated approximately 270m north of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365) and c. 550m south of the Killarney National Park Special Protection Area (Site Code: 004038). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 9: '*Natural Heritage, Biodiversity & Conservation*' of the Development Plan, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the

designated site should be accompanied by such sufficient information as to show how the proposal will impact on same. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

Having reviewed the available information, including the screening exercise undertaken by the Planning Authority in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that in light of the nature and scale of the development proposed, the availability of public services, the nature of the receiving environment, and the separation distance between the lands in question and the nearest European sites, no appropriate assessment issues arise and that the proposed development would not be likely to have any significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the restricted nature of the site and the pattern of development in the area, it is considered that the proposed development, by reason of its overall scale, design, height and positioning on site relative to the site boundary, would seriously injure the residential amenity of the adjoining property to the north by reason of visual obtrusion, overbearing impact, overlooking and overshadowing. Furthermore, the proposed development would adversely affect the development potential of the adjoining lands thereby seriously injuring the amenities and depreciating the value of property in the vicinity of the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

17th August, 2017