



An
Bord
Pleanála

Inspector's Report PL08.249266

Development	Alterations to existing house, construct pedestrian alleyway, demolish existing rear extensions and construct 4 no. apartments.
Location	39 New Street, Monearmore, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/1304
Applicants	Martin & Pamela Walsh
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	1. Ambrose Clarke 2. Anne Govan
Observer(s)	None
Date of Site Inspection	22/11/17
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. No.39 New Street is a mid-terrace, three storey dwelling within Killarney town centre. New Street is characterised by a mix of two and three storey terraced buildings in both commercial and residential use, some of which have the benefit of side access to the rear. The street allows for two way traffic with double yellow lines along the northern side (same side as No.39) with paid parking on the other.
- 1.2. No.39 is unoccupied and is served by a long, narrow rear garden which is overgrown. It has a stated area of 0.06 hectares. A two and three storey apartment scheme has been developed to the rear of No.38 (east) with windows serving habitable rooms overlooking the appeal site. A 2 metre boundary wall delineates the boundary. There are a number of sheds to the rear of No. 40 (west) which is maintained as a rear garden. The boundary wall steps down to less than 1 metre along the northern section. There are mature trees in close proximity to the wall. The sites backs onto the Presentation Gym site which is accessed from St. Mary's Road. The boundary is delineated by a high stone wall.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 23/12/16 with further plans and details received 25/05/17 and 31/07/17 following a further information request dated 23/02/17 and clarification of further information request dated 06/07/17. Revised public notices were received 12/06/17.

As amended the proposal entails:

- Alterations to existing dwelling including demolition of rear extensions and insertion of a pedestrian access from New Street.
- Construct 2 no. two storey buildings to the rear of the existing dwelling providing for 4 no. two bed apartments (2 no. in each) ranging in size between 80 sq.m. and 88 sq.m.

The buildings are to have a finished height of 6.650 metres with a flat roof profile to be finished with a metal standing seam system. 1st floor windows in the eastern elevation are to serve hallways, only, with the 1st floor windows to the western elevation being either high level or fitted with opaque glass. The apartments in the

southern most building will be served by a private open space along the northern elevation with the units in the northern building served by patios/balconies along the southern elevation. A setback of 6 metres is to be maintained between the buildings.

The 2 metre high boundary wall along the northern, eastern and western boundaries is proposed.

The buildings are to be set back from the northern boundary so as not to prejudice the realisation of development plan objective R13 which seeks to provide a new road to the rear of New Street.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 11 conditions addressing standard planning and engineering requirements. Condition 3 requires a financial contribution of €20,000 in lieu of 5 no. parking spaces.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The *1st Executive Planner's* report includes EIA and AA screening reports. It is considered that there is a precedent for this type of development along New Street and the principle is acceptable. There is no attempt to alter or rearrange the front façade of the building and the resulting streetscape is not acceptable. Objective R13 for a roadway to the rear of the properties is noted. Further information is required on Irish Water's requirements, revision of front elevation to provide for a more symmetrical front façade following the creation of the archway, revised proposals to address overlooking of adjoining property, private amenity space for existing dwelling, boundary treatments and setback of northern apartment block in the context of Objective R13. A *2nd report* requires clarification of further information including width of the site and boundary treatment.

A *3rd report* from *Senior Executive Engineer* dated 23/08/17 (countersigned) notes that disputes between land owners regarding land ownership and site boundaries

are essentially civil matters. A grant of permission subject to conditions is recommended.

3.2.2. Other Technical Reports

Estates Unit in a memo dated 19/01/17 queries how the buildings will manage without proper vehicular entrance in the long term. Issues of density, plot ratio, privacy, lateral clearance and parking provision are also queried.

The *Assistant Engineer* in an email dated 23/02/17 notes that the northern apartment block is located along the line of the roadway indicated in the town development plan (objective R13) and cannot be granted in that location.

3.3. Prescribed Bodies

Irish Water in a report dated 25/01/17 recommends further information on water and sewer layout.

3.4. Third Party Observations

The objections received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those set out in the 3rd party appeals summarised in section 6 below.

4.0 Planning History

PL63.211111 (04/4256) – 2005 grant of permission to demolish existing building to construct 1 No. retail unit and 5 no. apartments at 38 New Street. 1st party appeal was against financial contribution in lieu of parking spaces, only.

5.0 Policy Context

5.1. Killarney Town Development Plan 2009-2015

The site is within an area zoned town centre within which residential is a permitted use.

Objective R13 – to provide a new road to the north of New Street.

Section 12.9 sets out development management standards.

Site coverage of up to 80% with a maximum plot ratio of 2.5 are permitted in the town centre.

In general the density in housing development shall range between 30-40 per hectare. Within the town centre a higher density of development may be considered where it is felt that such infill development would integrate with the streetscape. The development will, however, be required to comply with the standards 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.

Section 12.20 – Regard shall be given to the relevant Government Guidelines on Design Standards for Apartments.

Section 12.21.1 - Development of residential apartments shall be provided with amenity open space within the site (exclusive of car parking space) solely for the residents at a rate of 10 sq.m. for a one bedroom apartment and 20 sq.m. for a two/three bedroom apartment.

Section 12.53 – In the town centre where car parking cannot be provided on site a development contribution towards the provision of public car parking will be required.

1.25 spaces per apartment are required.

5.2. **Natural Heritage Designations**

None in the vicinity

6.0 **The Appeal**

Two 3rd Party appeals refer, both from the owners of the properties adjoining the appeal site to the east and west.

6.1. **Ambrose Clarke (No.40 New Street)**

The grounds of appeal can be summarised as follows:

- The garden does not appear to be big enough to accommodate the development. The footprint of the building is too large for the space available.
- It is believed that the developer is required by law to build an appropriate boundary wall between the properties. The existing wall along the shared boundary is too small. All the trees are within his property. To knock the wall will weaken the root system of the trees to which he objects. Therefore the wall would be required to be constructed entirely within his site which further limits the space available.
- The apartments are less than 1 metre from the mature trees.
- There is no amenity space for future occupants.
- No car parking is provided which does not comply with the County Council's guidelines. The potential for future provision from the new road to the rear, which is a development plan objective, has not been considered.
- The knocking through of a walkway from New Street to the rear of the site would have a negative impact on the historic building. The wall to the rear to be demolished to facilitate construction is also very old and historic.
- Access by emergency services to the rear of the site would be limited.
- Refuse provision and disposal and impact on pedestrian safety along New Street is relevant.
- There will be a loss of privacy from the windows overlooking his rear garden.

6.2. **Anne Govan (No.38 New Street)**

There is a large tree rooted on the appeal site which is obstructing her property. No assurance has been given regarding its removal and making good any repairs that may be incurred on her property. After the tree is removed a boundary wall will be required.

6.3. Applicant Response

The submission by Griffin Project Management on behalf of the applicant can be summarised as follows:

- Qualified personnel will be employed to remove the tree referred to by Ms. Govan.
- The dimensions on the site layout plans are correct. The legal documents furnished to the planning authority detail the dimensions of the property.
- The western boundary is a party boundary and there is no requirement to construct independent boundary walls. It is proposed to increase the height of the party wall to 2 metres. This will prevent overlooking from ground floor windows.
- The wall built between nos. 38 and no.39 is entirely within no.38. It was not their intention to show this as a party wall.
- There are a minimum number of windows overlooking the property to the west. The application site is overlooked from the east by a similar apartment development.
- The proposal, including amenity space, complies with the Apartment Standards.
- There is sufficient parking in the car park adjoining the Cathedral.
- The revised site layout takes account of the roads objective to the north. 6 metres is considered sufficient. The roadway to be constructed would have a 1.5 metre footpath and 4.5 metre roadway.
- No.39 will not be demolished but alterations will be required.
- The existing dwelling will have a private yard of c.45 sq.m.
- The proposal will have no effect on adjacent properties some of which are significantly higher than the proposed building.
- The alterations to the fenestration address the appellant's concerns regarding overlooking.

6.4. **Planning Authority Response**

None

6.5. **Observations**

None

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

1. Principle of Development
2. Suitability of Design and Amenities of Adjoining Property and Prospective Occupants
3. Other Matters
4. Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. As noted on day of inspection in-depth development of rear gardens of properties fronting onto New Street have been facilitated, notably that immediately to the east to the rear of No. 38 on which five apartments have been facilitated in a two and three storey building with windows serving habitable rooms overlooking the appeal site. Access is via a pedestrian laneway from New Street. I also note that 3 no. single aspect, two storey dwellings have been developed to the rear of No. 43, again with pedestrian access provided from New Street. Neither of the two developments have off street parking provision or vehicular access with limited or no open space. It appears that it is on the basis of the precedent set by these developments that the proposal is accepted by the planning authority.
- 7.1.2. In terms of the town centre zoning for the site within which residential is permitted the proposed development consisting of 4 apartments is acceptable in principle.
- 7.1.3. I estimate that the site coverage would be in the region of 65% with a plot ratio of less than 1, both of which are less than the development plan maximums of 80% and

2.5 respectively, for town centre sites. In terms of density, the scheme in providing for 4 apartments on 0.06 hectares, equates to 67 units per hectare and is materially greater than the indicative accepted densities as set out in the Killarney Development Plan although I note that both the said plan and the Guidelines for Sustainable Residential Development in Urban Areas consider such town centre locations as appropriate for increased densities. Notwithstanding, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

7.2. Suitability of Design and Amenities of Adjoining Property and Prospective Occupants

- 7.2.1. At the outset I note that the issue of the site constraints in terms of width and size and adequacy to accommodate the development as proposed has been raised by Mr. Ambrose. The agent for the applicant refers to the deeds submitted to the planning authority with the width shown thereon stating that the details presented are correct. As extrapolated from the said legal documents the average width of the site is 24 feet which equates to 7.3152 metres. The width of the site as measured from the site layout plan drawing no. 16-049-02 Revision A and cross section drawing no. 16-049-07 Revision A is between 7.9 and 8.1 metres. As such there does appear to be merit in Mr. Ambrose's contention.
- 7.2.2. I also note from the applicants' response to the clarification of further information request received by the planning authority on the 31/07/17 that they contend that the apartment scheme as constructed to the rear of No.38 is not in accordance with that permitted under ref. 04/4256. As evidenced on site the separation distance between the apartment building and the boundary wall is less than the 1.5 metres as delineated on the relevant site layout plan (copy submitted by the applicant in its clarification of further information response) with the projecting windows level with the wall.
- 7.2.3. Notwithstanding the apparent discrepancies detailed above I submit that the development potential of the site is constrained by both its restricted width and the pattern of existing development, notably the two and three storey apartment

development to the east with windows serving habitable rooms overlooking the appeal site

- 7.2.4. Whilst I consider that the design in its approach attempts to address these site constraints, I am not convinced that the final design is successful. Although windows in the eastern elevation do not serve habitable rooms issues of overlooking would still arise from the proposed 1st floor balconies in the two blocks. In addition, I submit that the maintenance of a 2.8 metre separation, only, between opposing facades would have a material negative impact on the access to light and aspect currently afforded the 1st floor apartments and would detract materially from their residential amenities. I note that the boundary is delineated by a 2 metre high wall.
- 7.2.5. A setback of 1.3 metres is proposed between the proposed buildings and the shared boundary to the west which is delineated by a low wall in the northern section. Although the design solution in terms of fenestration to the western elevation may address issues of overlooking such concerns still arise from the 1st floor balconies proposed in the two blocks as mentioned above. In addition, I would also submit that the buildings, by reason of their extent, would have an overbearing impact on the rear garden of No.40 whilst also prejudicing its development potential.
- 7.2.6. Although the proposed 2 bedroom apartments meet the minimum requirements as set out in the Design Standards for New Apartments 2015, I consider that the design interventions required to address the site constraints would result in a substandard level of development and amenity for prospective occupants. The ground floor apartments are largely served by windows that will face directly onto a 2 metre wall with only a separation distance of 1.3 metres proposed to be maintained. The majority of the windows at 1st floor level are either high level or require opaque glazing, whilst the said private amenity space to the apartments located on the southern elevation of the northern block and the northern elevation block (with a setback of only 6 metres to be maintained between them) will directly overlook each other. Whereas the absence of on-site parking provision and communal open space would not, in themselves, be considered to be a major failing in such a town centre site I consider that the absence of such provision, coupled with the apartment design and aspect, would exacerbate the substandard nature of the accommodation.

- 7.2.7. I consider that the proposed access requiring the provision of a pedestrian laneway from New Street is not an optimum arrangement and the impact such provision has had on the streetscape is evident from the existing pedestrian facilities serving the developments to the rear of Nos. 38 and 43. Although I acknowledge that the subject property is neither a protected structure nor within an architectural conservation area New Street maintains a strong streetscape with the property in question contributing to same. To facilitate a further access which would require alterations to the front elevation and a disruption in the vertical emphasis at ground floor level, would result in a further erosion in the character of the streetscape.
- 7.2.8. Overall I consider that the proposal is a substandard form of development that compromises not only the residential amenities of the prospective occupants but also the amenities of adjoining property. To justify the proposal by referencing other comparable development which has been permitted in the vicinity, in my opinion, would perpetuate substandard development.
- 7.2.9. I also consider that the piecemeal development of individual plots to the rear of New Street without due consideration to the development potential of adjoining lands could essentially prejudice their realisation in the future. This is evidenced by the impact of the development on the lands immediately to the east which undoubtedly has an undue impact on the appeal site. I submit that the realisation of the Development Plan roads objective R13 to the north of New Street may provide the opportunity for the coordinated and planned development of the backlands, including appropriate vehicular access arrangements both for residents and service vehicles. To allow for such piecemeal haphazard development at this juncture would set an undesirable precedent for further similarly conceived development and prejudice the development potential of such scarce, town centre serviced lands.

7.3. Other Matters

- 7.3.1. There is a paucity of detail accompanying the application as to how trees on the appellant's site will be protected during construction with the agent for the applicant not availing of the opportunity in the appeal response to respond to the concerns. The comments in terms of the tree within his property and its impact on the appellant's property to the east (No.38) are noted.

- 7.3.2. The issue of boundary treatment particularly that to the property to the west (No.40) has been raised. The applicant proposes to increase the existing stone wall along the party boundary to 2 metres whilst the appellant's consent in terms of the alterations would not be forthcoming. This is a matter for resolution between the parties and, should permission be granted, the applicant should be advised of Section 34 (13) of the Planning and Development Act, 2000, as amended which states that a person shall not be entitled solely by reason of a permission to carry out any development.
- 7.3.3. As noted above I do not consider that the absence of car parking or communal open space in such a town centre location where a scheme has a high standard of design to be fatal. A financial contribution in lieu of same is acceptable in principle.
- 7.3.4. I note the appellant's concerns regarding refuse bins along New Street. This would not be an uncommon occurrence in towns and villages and often the only option for properties with no rear access as is the case in this instance.
- 7.3.5. I draw the Board's attention to the fact that the Planning Authority Planner's Report on this case includes a formal EIA Screening. In my view such a screening exercise (formal EIA determination) is not warranted for the proposed development consisting of 4 apartments on a site with a stated area of 0.06 hectares. The proposal falls materially short of the thresholds as set out for both dwelling units (500) and site area (2 ha in a business district) on Class 10 Schedule 5 of the Planning and Development Regulations, 2001 as amended. Therefore, I submit that a sub-threshold scenario as expressly provided for under Article 109(2) Planning and Development Regulations would not reasonably apply.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development on a serviced site within Killarney town centre and the distance to the nearest designated site 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 permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the site configuration and location to the rear of New Street and to the pattern of development in the vicinity, it is considered that the proposed development, by reason of its layout and design, would constitute undesirable and haphazard backland development on a restricted site which would set a precedent for similar development in the area, would result in a substandard level of residential amenity for prospective occupants and would seriously injure the amenities and depreciate the value of property in the vicinity by reason of overlooking and loss of privacy. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

November, 2017