



An
Bord
Pleanála

Inspector's Report PL08.249418

Development	Change of use of the first floor from office accommodation to apartment accommodation
Location	Monearmore (38 New Street), Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/555
Applicant(s)	Ann Govan
Type of Application	Permission
Planning Authority Decision	Grant subject to Conditions
Type of Appeal	Third Party
Appellant(s)	Martin Walsh
Observer(s)	n/a
Date of Site Inspection	27 th November 2017
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.482 ha is located on New Street in Killarney town centre. New Street has a mix of residential and commercial developments. The parent building has a mix of residential, office and retail units.
- 1.2. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file.

2.0 Proposed Development

- 2.1. The application submitted to Kerry County Council on **13th June 2017** was for a change of use of the first floor from office accommodation to 2 bed apartment accommodation (63.18 sqm).
- 2.2. In response to a request for further information the applicant submitted the following, as summarised on **30th August 2017**:
 - Revised floor plan showing 1 no bedroom apartment *with adequate storage*
 - Site layout plan showing amenity area for all existing apartments and the proposed apartment. Submitted that there is an existing wicket gate located on the service path marked with letter X and that it is provided as a safety barrier for children playing in the amenity area. Further stated that this amenity area is open to all apartments for their use and not just for the private use of one apartment.
 - Submitted that conditions imposed on Reg Ref 04/204256 are being complied with regard to amenity area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kerry County Council issued a notification of decision to grant permission subject to 5 generally standard conditions. Two conditions of note are summarised as follows:

Condition No 1 – Development shall be carried out in accordance with the plans submitted on 13th June 2017 and 30th August 2017.

Condition No 2 – The apartment shall be a one bedroom apartment in accordance with revised plans submitted 30th August 2017. The occupants of the proposed apartments shall have full use of the communal amenity space to the rear of the site.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The **Local Authority Planner** in their first report recommended that the following further information be requested as summarised:

- The 2 bedroom apartment does not meet the minimum floor area of 73 sqm as set out in the Apartment Guidelines 2015. A revised floor plan should be submitted indicating a one bedroom apartment with adequate storage.
- Details of the private amenity space that will be available to the future occupants of the proposed apartments. If it is the case that the communal amenity area has been condoned off for the private use of one apartment this is not in accordance with Reg Ref 04/204256.

3.2.3. Kerry County Council requested **further information**, as set out in the Case Planners Report, on **3rd August 2017**.

3.2.4. The **Local Authority Planner** in their second report and having considered the following further information stated that all issues have been satisfactorily addressed in the particulars submitted **30th August 2017**. The Planner recommended that permission be granted subject to 5 conditions. The notification of decision to grant permission issued by Kerry County Council reflects this recommendation.

3.2.5. Other Technical Reports

3.2.6. There is no evidence of any internal reports recorded on the planning file.

3.3. **Prescribed Bodies**

3.3.1. There is no evidence of any reports from prescribed bodies recorded on the planning file.

3.4. Third Party Observations

3.4.1. There is one observation recorded on the planning file from Griffin Project Management, Civil Engineering & Project Management Consultant on behalf Martin Walsh, Tralee Road, Killarney. The issues raised are similar to those raised in the third party appeal below and may be summarised as follows:

- The proposal does not comply with the Department of Environment Community and Local Government Design Standards for Apartments. Further the proposal does not comply with the Building Regulations TGD B with regard to notional boundaries and the separation distances from adjoining boundaries.
- None of the rooms comply with the minimum aggregate floor areas / dimensions as set out in the guidelines for 2 bedroom apartments, there is inadequate storage space allowed within the apartment; there is no private amenity space or communal space provided; the windows to the bedrooms directly overlook adjoining properties and there is no refuse storage provided.

4.0 Planning History

4.1.1. There was a previous appeal on this site that may be summarised as follows:

PL63.211111 (Reg Ref 04/4256) – in April 2005 Kerry County Council issued notification of decision to grant permission for the demolition of an existing building to construct 1 No. retail unit and 5 no. apartments 38 New Street, Killarney, County Kerry subject to 18 no conditions. The applicant appealed Condition No 14 that required the payment of financial contribution in the amount of €45,000 towards in respect of the provision of car parking by Killarney Town Council in the absence of car parking facilities to serve the proposed new part of the development which would require a minimum of 9 No. car spaces. In **August 2005** the Board attached Condition No 14 requiring the payment in the amount of €36,000 in respect of public car parking facilities.

4.1.2. Reference is made throughout the appeal to the following previous planning applications on this site:

Reg Ref 07/4779 – In November 2007 Kerry Town Council granted permission to retain and complete the existing building of 4 no apartments, 1 no retail unit and 2 no offices at No 38 New Street, Killarney subject to 19 conditions.

- 4.1.3. It is noted that there is a current appeal on the adjoining site to the west that, according to the An Bord Pleanála website that case is due to be decided by 30th January 2018. The details available may be summarised as follows:

PL08.249266 (Reg Ref 16/1304) – Kerry County Council issued a notification of decision to grant permission on 24th August 2017 to carry out alterations to existing dwelling house, and construct pedestrian alleyway, demolish existing rear extensions and construct 4 no. apartments subject to 11 conditions. This decision was appealed by a third party. According to the An Board Pleanála website the case is to be decided by 30th January 2018.

5.0 Policy Context

5.1. National Policy

- 5.1.1. The following is a list of Section 28 Ministerial Guidelines considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design manual) (2009)
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2015)

5.2. Development Plan

- 5.2.1. The operative plan for the area is the **Kerry County Development Plan 2015 – 2021** and the **Killarney Development Plan 2009 – 2015**. Kerry County Council state that the Killarney Town Development Plan 2009-2015, amongst others, are extended until they are superseded by the relevant Municipal District Plans. It is noted that the preliminary preparation of the Draft Killarney Municipal District Local Area Plan began on the 8th of December, 2016.

5.2.2. The appeal site is zoned “Town Centre” in the Killarney Development Plan, where the objective is to *provide for and improve the development of the Town Centre. This aim covers the central area and includes a wide and varied range of land uses.* Chapter 12 of the Development Plan sets out the Land Use Zoning Objectives and Development Management Standards for the area.

5.3. Natural Heritage Designations

5.3.1. The site is not located within a designated Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The third party appeal has been prepared and submitted by Griffin Project Management, Civil Engineering & Project Management Consultant on behalf Martin Walsh, Tralee Road, Killarney who object to the development and that to allow permission for same would be contrary to the proper planning and development of the area. The appeal may be summarised as follows:

- The proposal does not comply with the Department of Environment Community and Local Government Design Standards for Apartments.
- The proposal does not comply with the Building Regulations TGD B with regard to notional boundaries and the separation distances from adjoining boundaries.
- None of the rooms comply with the minimum aggregate floor areas / dimensions as set out in the guidelines for apartments; there is inadequate storage space allowed within the apartment; there is no private amenity space or communal space provided; the windows to the bedrooms directly overlook adjoining properties, there is no refuse storage provided,
- The premises at No 38 New Street as constructed is not in compliance with planning permission Reg Ref 07/4779 (projecting windows, boundary wall, magnetic flowmeters and grease traps). The communal landscaped area has been closed off with a gate and wall and in the use solely by the rear apartment. Further it has not been finished or surfaced in accordance with

the planning permission. There is a locked gate as access to the laneway, this is contrary to the requirements of the Fire Certificate and would result in residents being trapped in the laneway.

6.2. Applicant Response

6.2.1. The first party response to the third party appeal has been prepared and submitted by Paddy O'Donoghue, Consultant Engineer, and may be summarised as follows:

- The proposed development complies with Apartment Design Standards (2007) (detailed table provided)
- There is an existing bin storage room on the ground floor which will served the proposed apartment
- There is a communal landscaped area in the northern corner of the site which is of use to all the existing apartments
- The construction of the new apartment will comply with the building regulations
- Reg Ref 07/4779 was granted permission on 5th November 2007 subject to 19 conditions. Following an inspection of the file in the Council offices it is submitted that in relation to the landscaped communal area, projecting windows, boundary walls, magnetic flow metres and grease traps is a red herring and has no bearing on this application. All items were dealt with before planning permission was granted. The new boundary between No 38 and No 39 was built inside the existing old boundary fence in the applicant's prosperity.

6.3. Planning Authority Response

6.3.1. There is no response from Kerry County Council recorded on the appeal file.

6.4. Observations

6.4.1. There is one observation recorded on the appeal file from Paddy O'Donoghue, Muckross, Killarney in response to the appeal that may be summarised as follows:

- The amended scheme complies with requirements of the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2015)
- There is an existing bin storage room on the ground floor
- There is a communal landscaped area in the northern corner of the site which is for the use of all the existing apartments
- With regard to Reg Ref 07/4779 it is submitted that all matters were dealt with before planning retention permission was granted
- The new boundary between 38 and 39 was built inside the existing old boundary fence on Ann Govan's property

6.5. Further Responses

6.5.1. There is no further responses recorded on the appeal file.

7.0 Assessment

7.1. The application submitted to Kerry County Council on **13th June 2017** was for a change of use of the first floor from office accommodation to 2 bed apartment accommodation (63.18 sqm). In response to a request for further information the applicant submitted amended proposals on **30th August 2017** for a 1 bed apartment. Accordingly, this assessment is based on the plans and details submitted on 13th June 2017 as amended by on 30th August 2017.

7.2. I note the concerns raised that the proposal does not comply with the Building Regulations or the requirements of the Fire Safety Certificate. Issues of compliance with the Building Regulation and the Fire Safety Certificate are not planning issues and I do not therefore propose to deal with this issues in this assessment. These are matters for Kerry County Council.

7.3. I further note the concerns raised that the parent premises at No 38 New Street as constructed is not in compliance with the terms and conditions of planning permission Reg Ref 07/4779. Issues of non-compliance with conditions is a matter for the Local Authority and not An Bord Pleanála. I do not therefore propose to deal with this matter in this assessment.

7.4. Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Residential Amenity
- Development Contribution
- Screening for Appropriate Assessment

8.0 Principle / Policy Considerations

8.1. Having regard to the sites urban location together with the land use objective for the site I am satisfied that the principle of the proposed scheme comprising a change of use of the first floor office accommodation to a one bed apartment accommodation is acceptable at this location.

8.2. With regard to compliance with the Guidelines for Apartment standards (2017) in terms of storage, room size etc I have considered the amended plans submitted by way of further information together with the applicant response (table provided) to the appeal and I agree with the applicant that proposed development as amended complies with Apartment Design Standards (2007). With regard to the concerns raised that the apartment will overlook adjoining properties I am satisfied the proposed scheme is not a bad neighbour at this high density urban location and that there will be no significant loss of amenity to adjoining properties as a result of the proposed change of use. Matters pertaining to provision of amenity space are considered below.

9.0 Residential Amenity

9.1. I note the concerns raised that there is no private amenity space or communal space provided to serve the apartment. I have also noted that history file pertaining to this site, Reg Ref 07/4779 refers, and the details made available with the appeal file where a green area at the very end / rear of the site appears to be designated as communal open space. Condition No 2 of the notification of decision to grant

permission stated that the *“occupants of the proposed apartments shall have full use of the communal amenity space to the rear of the site”*.

- 9.2. As noted on day of site inspection this “communal landscaped area” located to the rear / end of the site was closed off with a gate (site photos refer). Further it appeared that the area was being used solely as a private rear garden by the occupants of the adjoining ground floor apartment who included small children and a large family dog. This family use is reflective of the wide ranging needs of tenants in rental accommodation and the facilitation of same by the landlord, is in my view, to be complimented.
- 9.3. It was also evident on day of site inspection that owing to the poor design, location and access associated with this open space, that it was probably unwelcoming to tenants from the first day with the result that it was, in all likelihood, absorbed into the rear ground floor apartment use over time. Further, there is no evidence of the Planning Authority pursuing the use or otherwise of this space. This however does have the result that this amenity space is no longer available to other tenants in the building and therein lies the difficulty.
- 9.4. In my view, while at least on paper this open space, serves to meet the standardised requirements for the provision of open space within a relatively high density scheme such as this, the reality as built out is that it provides no meaningful value to the wider development in terms of a well-considered usable amenity space.
- 9.5. In my view the existing amenity space only provides meaningful benefit to the rear ground floor apartment and to insist on communal access to meet standardised requirements would diminish the residential amenity of all tenants and particularly those of the rear ground floor apartment by reason of the proximity of the access lane to windows and doors (site photos refer). To add a further physical intervention, such as a high wall to provide some demarcation between the ground floor apartment and the open space in order to address these problems would result in a significant loss of amenity to the rear ground floor and in all likelihood an unusable poor quality communal amenity area.
- 9.6. Killarney unlike many towns is abundantly served by quality public parks and amenities. Therefore to insist on this communal open space being made available to all tenants would in my view serve no tenants interest and may in fact contribute to a

significant deterioration in the overall amenity of the scheme. What is required is a practical and sensible approach to balancing the standardised approach to the provision of communal open space with the wider urban amenities that are available proximate to this town centre location. Accordingly I am supporting the scheme as presented without the segregation of the communal open space to the rear and recommending that only the occupants of the rear ground floor apartment have full use of the amenity space to the rear of the site.

- 9.7. The foregoing should be not be mis-interpreted as a carte blanche approach to compliance with the requirements for the provision of open space in urban areas. In this case there is an existing building with a very high plot ratio relative to its location and the issues arising are symptoms of the original poor design. Therefore flexibility is required to ensure the best possible outcome for all residents is achieved without further deterioration to existing residential amenities. Compliance with the relevant standards and Guidelines is the starting point for all developments.

10.0 Development Contribution

- 10.1. Kerry County Council did not attach any condition requiring the payment of any contribution towards the expenditure that was and / or is proposed to be incurred by the planning authority in respect of public infrastructure and facilities.
- 10.2. Kerry County Council adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) on 25th July 2017. Section 6 Change of Use & Intensification of Use of the scheme states that

Development consisting of the conversion or renovation of upper floors of buildings into business/commercial or residential uses in areas zoned as Town Centre in Local Area Plans shall be exempt from the provisions of the Development Contributions Scheme

- 10.3. Having regard to the foregoing it is recommended that should the Board be minded to grant permission that no Development Contribution condition is attached.

11.0 Screening for Appropriate Assessment

11.1. 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

12.0 Recommendation

12.1. Having considered the contents of the application, the provision of the Development Plan and the Guidelines for Apartment Design Standards (2007), the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

13.0 Reasons and Considerations

13.1.1. Having regard to the location of the site within the town of Killarney, the land use zoning objective for the site, the established residential use of the site, the pattern of development in the area, the nature and scale of the proposed development, and the policy considerations set out in the current Development Plan for the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would constitute an appropriate form of development at this location, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 13th June 2017 as amended by the further plans and particulars submitted on the 30th August 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be

agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The proposed development shall be amended as follows:
 - (a) The apartment shall be a one bedroom apartment in accordance with revised plans received by the Planning Authority on 30th August 2017.
 - (b) Only the occupants of the rear ground floor apartment shall have full use of the amenity space to the rear of the site. This area shall not be used as a communal amenity space.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity

3. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1300 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the [residential] amenities of property in the vicinity

Mary Crowley
Senior Planning Inspector

24th January 2018