



An
Bord
Pleanála

Inspector's Report ABP-300143-17

Development	Change of use from retail unit to one bedroomed apartment and all ancillary site development works
Location	Dun Brinn, Ardrew, Athy, Co Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/945
Applicant(s)	Michael Murphy
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Michael Murphy
Observer(s)	None
Date of Site Inspection	14 th February 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located to the south-west of the town centre of Athy, Co. Kildare. It is c.600m west of the Canal and c.600m south of the N78 road. The site is accessed off the Fortbarrington Road through the Dun Brinn housing development. Pedestrian access is provided directly off the Fortbarrington Road. The building is one of two buildings at the front of the housing estate. The second building to the rear (east) of the subject building currently houses a childcare centre.
- 1.2. The site currently comprises a single storey building split into three units. Each unit has its own front door directly out to a surface car park. The building has a pitch roof and is 5.815m high. The building is bounded by a footpath to the front. The building lies roughly in a north-south direction parallel to the Fortbarrington Road.
- 1.3. The building was originally designed for three retail units. Currently there is one retail unit – a Gala store on the southern end of the building. A retail unit has been converted into a residential unit on the northern end of the building. The subject unit is the middle unit.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. Permission is sought for the change of use from retail to a one bed roomed apartment. The apartment comprises an open plan kitchen/dining/living room off a lobby at the front door and a shower room, storage room and bedroom to the rear. The overall floor area is stated as being 53.82sq.m.
- 2.2. A door to the rear from the bedroom leads to a private open space that runs to the rear of the building and the retail unit. This area is noted as being 1.9m wide. The overall area of the rear space is 33.80sq.m. A rooflight window is proposed above the kitchen/dining area to provide more natural light and ventilation.
- 2.3. Two of the existing car park spaces to the front of the building are designated for the apartment.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for one reason.

1. The proposed development of a 1 bed own-door unit, would represent a substandard form of residential development by reason of poorly configured and inadequate provision of rear private open space to service the unit. The proposed development would, therefore, be contrary to the development management standards, as set out in Chapter 15 of the Athy Town Development Plan 2012 – 2018, and would result in a substandard level of residential amenity for future occupants of the unit, and would set an undesirable precedent for similar substandard residential development and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

- Notes permission was previously refused for the change of use of this unit due in part to the inadequate/useable private open space to the rear and concerns of the Environmental Health Officer.
- It is noted that the subject proposal includes for an extension of the side passage to the rear of the adjacent convenience shop which is currently in use as a storage area and closed off by a pair of wooden gates.
- The extended space is considered to be of poor quality.
- It is noted that permission was granted for a change of use to the adjoining unit. This was considered to be acceptable, given its location at the end of the block where adequate natural light is available.
- It is deemed acceptable that one of the three original retail units could be converted to residential use at this location.

- It is considered that this unit is an own door unit as opposed to being an apartment with reduced open space requirements.
- Concludes that the space configuration is poor consisting of a narrow passageway between a relatively high boundary wall with the adjoining crèche facility and the rear elevation of the convenience store. The private space is not considered to be of sufficient quality or quantity.

The planner recommends refusal and the decision is in accordance with the planner's recommendation.

3.2.2. Other Technical Reports

- **Transportation:** No objections subject to conditions.
- **CFO:** No objections
- **Environment:** No objections subject to conditions.
- **Area Engineer:** No objections.
- **Water services:** No report.

3.3. Prescribed Bodies

No reports on file.

3.4. Third Party Observations

None.

4.0 Planning History

- **Reg. Ref. 17/607:** Permission was refused in July 2017 for a similar development. The refusal reason referred to lack of adequate open space and natural ventilation, air circulation and natural lighting.
- **Reg. Ref. 16/1132:** Permission was refused in December 2016 for a vehicular entrance from the public road to serve the subject site. It was considered that the existing entrance arrangement for the crèche, apartments and shop units off a shared cul-de-sac is appropriate.

- **ABP PL09.248439, Reg. Ref. 16/1253:** Retention permission was granted by the Council for a change of use from retail to a one bedroomed apartment in April 2017 (northern most unit of the block of 3). The Development Contribution appeal only was appealed to the Board who decided that there was no contribution required.
- **Reg. Ref. 00/300051:** Permission was granted in November 2005 (following an extension of duration request) for the development of housing to include new entrance, access roads, two storey building comprising crèche and doctor's surgery and shop units.

5.0 Policy Context

5.1. Kildare County Development Plan 2017 – 2023

- 5.1.1. Section 1.9 of Volume 2 of the Kildare County Development Plan notes with respect to the Athy Town Plan that 'The County Development Plan 2017-2023 will replace the Naas and Athy Town Development Plans when adopted and Local Area Plans will be prepared for Naas and Athy.'
- 5.1.2. Chapter 17 refers to Development Management Standards. Table 17.4 lists minimum floor areas and storage areas for houses. It is noted that a one-bedroom dwelling is to be a minimum of 55sq.m with 3sq.m storage. Table 17.5 refers to minimum open space and 48sq.m is required for a one-bedroom dwelling.
- 5.1.3. Table 17.6 refers to apartments. A one-bedroom apartment has a minimum floor area of 45sq.m and 3sq.m of storage. Table 17.7 refers to minimum amenity space standards and a one-bedroom apartment requires 5sq.m of private space.

5.2. Athy Town Plan 2012 – 2018

- 5.2.1. Chapter 15 of the Athy Town Plan refers to Development Management Standards. Table 15.3 of the Plan requires a minimum floor area of 48sq.m for a one-bedroom dwelling and 55sq.m of private open space. A one-bedroom apartment requires a minimum floor area of 55sq.m and 10sq.m of private open space.
- 5.2.2. The Land Use zoning map indicates the site is zoned 'B – Existing Residential and Infill'.

5.3. **Sustainable Urban Housing: Design Standards for New Apartment, Guidelines for Planning Authorities 2015**

This document notes that minimum floor area for a one-bedroom apartment is 45sq.m and 5sq.m of private amenity space.

5.4. **Natural Heritage Designations**

The site is c. 600m from the River Barrow and River Nore SAC (Site Code 002162).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A first party appeal has been lodged against the decision of the Planning Authority to refuse permission. In summary, it states:

- The Council had only one issue with the application which was open space and the applicant considers it is adequate for a small one-bedroom apartment.
- The space of 33.8sq.m will be landscaped and exceeds the minimum requirements of 10sq.m as set out in the Athy Town Plan and 5sq.m of the Sustainable Urban Housing Standards for new apartments.
- Applicant owns and runs the shop next door and wishes to be near this shop for work, revised family arrangements and security reasons.
- The site is located within land use zoning B which is for existing residential and infill. The premises uses the same entrance as the Dun Brinn housing estate which has acres of open space as well.
- The premises being located in a residential area of Athy has struggled to do any business during the day due to lack of footfall.
- In the years up to and including 2015 this premises was closed and boarded up. It has been rented as a barber shop which only lasted for 6 months in 2016 and again as another barber shop for 3 months. Since then, no one has been interested in renting it and applicant does not want to board it up again, particularly as it suits applicant's current circumstances to live in it.

6.2. **Planning Authority Response**

The Planning Authority responded to the appeal. It is restated that the Authority consider the unit is an own-door unit as opposed to a one-bedroom apartment with poorly defined and orientated private open space for future applicants.

7.0 **Assessment**

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

- Residential Amenities
- Appropriate Assessment

7.1. **Residential Amenities**

- 7.1.1. This is the second application for a change of use of the unit. The earlier application (see Section 4 Planning History above) referred to concerns with lack of adequate natural ventilation, air circulation and natural lighting, as well as open space standards. The applicant has modified the design to overcome the concerns relating to natural ventilation, air and lighting with the addition of a rooflight. The outstanding issue, and reason for refusal by the Planning Authority, is the rear private open space, which is considered to be poorly configured and inadequate.
- 7.1.2. The initial application indicated private open space immediately to the rear of the unit and not beyond. The subject application indicates that the space to the rear of the shop unit will be made available to the subject unit, resulting in private open space of 33.8sq.m.
- 7.1.3. I consider the issue at hand is whether the unit is considered a one-bedroom apartment or a one-bedroom house and therefore which Guidelines apply, and regardless, if the quality of that open space is acceptable and provides adequate residential amenity.

7.1.4. I note that the Council granted retention permission for the change of use of the adjoining unit to residential use. The Planning Authority sought further information in relation to that development, because a study was indicated on the plans, and the rooms and storage areas were below minimum standards. Following the revised internal layout submitted by the applicant the Planning Authority granted permission. Of note is the fact that the Planning Authority assessed the proposal against the development standards for apartments.

7.1.5. This proposal comprises an internal overall floor area of 53.8sq.m and an external space of 33.8sq.m. For ease of reading, I have summarised below in table format the various standards in the statutory documents.

Document	One Bed <u>House:</u> Min Floor Area/Min Private Amenity area (sq.m)	One Bed <u>Apartment:</u> Min Floor Area/Min Private amenity Space (sq.m)
Kildare County Development Plan 2017 - 2023	55/48	45/5
Athy Town Plan 2012 - 2018	48/55	55/10
Sustainable Urban Housing – Apartments 2015		45/5

7.1.6. I am satisfied that the overall floor area complies with the current Kildare County Development Plan for apartments and is just below the house floor area.

7.1.7. With respect to private amenity area, which is the core issue, I am satisfied that while the amenity area is below the 48sq.m required for a dwelling in the County Development Plan, it is substantially above that of an apartment. The area directly to the rear of the apartment is just below 10sq.m which is suitable for an apartment, not including the area to the rear of the shop unit.

7.1.8. However, I have concerns with the quality of the open space proposed to the rear of the shop unit. I do not consider that this is useable and in fact would be quite oppressive. However, it will provide room for bins etc. hence I would recommend that should the Board consider granting permission, that it remains part of the development proposal.

- 7.1.9. Notwithstanding the above, I am satisfied that this proposal should be considered for compliance with respect to apartment standards. As noted above, the other unit was assessed for compliance as an apartment. While I accept that as a result of the location of the unit at the end of the block there is automatically more natural light and ventilation, as well as more amenity space, I am satisfied that the subject proposal is acceptable in this instance and will not set a precedent. It complies with the minimum standards for apartments.
- 7.1.10. Furthermore, I consider the residential amenities of the wider area would not be seriously injured with the unit in active use as a dwelling, and is preferable to a vacant boarded up unit.
- 7.1.11. In conclusion, I am satisfied that the proposed change of use of a vacant retail unit to a residential unit is acceptable and complies with the minimum standards for apartments in the Development Plan.

7.2. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, 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**

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the location of the site within Athy, to the pattern of development in the area, and to the acceptable scale and design of the proposed change of use to a dwelling, it is considered that, subject to compliance with the conditions set out below, the proposed change of use would not seriously injure the residential amenities of the area or of property in the vicinity. The proposed development would,

therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to a one bedroom residential dwelling, unless otherwise authorised by a prior grant of planning permission.

Reason: To protect the amenities of property in the vicinity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Ciara Kellett
Inspectorate

15th February 2018