



An  
Bord  
Pleanála

## Inspector's Report ABP-300394-17

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<b>Development</b>	Permission to change the use of retail unit No. 1 to four apartment units (3 two bed and 1 single bed apartment unit) and all associated site works on lands.
<b>Location</b>	Glenvale, Ballyraggett, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	17/616
<b>Applicant(s)</b>	Andrew Lenny
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Andrew Lenny
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> March 2018
<b>Inspector</b>	Ciara Kellett

## 1.0 Site Location and Description

- 1.1. The appeal site is located just to the south of the centre of Ballyragget, Co. Kilkenny. The N77 road runs through the town linking Ballyragget to Kilkenny city in the south. The site is to the east of the N77 and forms the entrance to the Glenvale residential development. The River Nore is c.400m to the west of the appeal site.
- 1.2. There are two crescent shaped buildings on either side of the entrance to the Glenvale development. Each building is a mirror image of the other and comprises shop units at ground floor and apartments on the first floor. To the immediate rear of both blocks lies car parking which is accessed off the entrance road to the development. To the east (and rear) lie housing units.
- 1.3. The block, the subject of the appeal, is the block to the north. At ground floor there are 4 shop units. A butcher is located in unit 2 and a Chinese takeaway is located in unit 3. Unit 1 was formerly a supermarket which has closed. Unit 1 is the subject of the appeal and is located between Unit 2 and 3. Unit 4 has recently obtained planning permission to be converted into an apartment. No works appear to have begun on this unit.
- 1.4. To the front of the block, facing towards the N77 and the entrance road, there is cobble lock paving interspersed with planting. To the rear of both units is fully paved parking.
- 1.5. Appendix A includes maps and photos.

## 2.0 Proposed Development

- 2.1. It is proposed to change the use of the ground floor shop unit 1 to 4 no. apartments, comprising 3 no.2 bedroom and 1 no. 1 bedroom apartment at ground floor. The apartment sizes range from 51.95sq.m for the 1 no. 1 bedroom unit, to 79.28sq.m, 81.51sq.m and 85.86sq.m for the 2 bedroom units.
- 2.2. Individual private amenity space is indicated on the drawings for all 4 units with common green areas indicated, all to the rear and north-east facing.

2.3. Eight parking spaces are proposed for the residents to the rear of the car park.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to refuse permission for two reasons:

1. The proposed development would lead to an increased loading on an existing wastewater pumping station which is currently not taken in charge by Kilkenny County Council or Irish Water. The applicant has failed to demonstrate how this pumping station will be managed or maintained into the future, and has not demonstrated to the satisfaction of the Planning Authority that the existing pumping station has sufficient capacity for the proposed increased waste water loading. The proposed development would therefore be prejudicial to public health and proper planning and sustainable development of the area.
2. The applicant has failed to demonstrate adequate provisions in relation to the car park for (a) the provision of drainage, reinstatement of services and foul sewers, (b) construction details of the footways, kerbing and drainage to the rear of the apartments, (c) commercial delivery details and waste storage, and (d) traffic calming and the provision of a footpath to the car-parking area. The proposal for car-parking to serve the apartments is unsatisfactorily located remote from the units. The applicant has therefore not demonstrated that the proposed development would not give rise to traffic hazard and is therefore 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 the site is not zoned as per the current County Development Plan but site is located within the settlement boundary for Ballyragget.
- Notes that the documentation submitted with the application states that all issues raised in the application Reg. Ref 15/815 and 16/812 have been

addressed with respect to the pumping station. Planner refers to Irish Water submission which recommends refusal due to the increased loading on the wastewater pumping station which is not taken in charge, as well as failure to demonstrate how the pumping station will be managed.

- Refers to Roads Section report which seeks Further Information on a number of items including the landscaping and footpath access to the apartments, construction details of the footway and kerbing. The Roads Section also queried details about the area assigned for deliveries and any proposed segregation, as well as waste storage facilities.
- Notes private space of Apartment no.7 is taken up with existing plant and machinery serving the existing building. Notes in previous application (Reg.Ref.16/812) further information was sought regarding the provision of open space.
- Notes drawings for the previous application proposed a 1.2m high timber fence around the private open space, with a 2.1m high fence separating space between apartments 9 and 10. The current application proposes a 300mm fence with 5 cherry trees around the communal open space. Considers that while the open space is not ideal, having regard to its predominantly north facing aspect, it meets the minimum standards.
- Concludes that having regard to the documentation submitted, a refusal of permission is recommended.

The decision is in accordance with the Planner's recommendations.

### 3.2.2. Other Technical Reports

- **Environment:** No objections subject to conditions.
- **Roads Section:** Further Information required.

### 3.3. Prescribed Bodies

- **Irish Water:** Recommends refusal.

### 3.4. Third Party Observations

A third party submission was lodged by the adjoining butchers. In summary:

- Considers there is a big problem with sewage and wastewater outside his shop and the estate can take no more sewage.
- States that there is a large amount of anti-social behaviour currently.
- Considers development would be out of keeping with the existing shops.

## 4.0 Planning History

4.1.1. There is an extensive planning history with the site and the overall development. The relevant and most recent applications are summarised below:

- **KCC Reg. Ref. 16/812:** Permission was refused by the Council for a change of use of the shop unit 1, similar to the subject application in April 2017. Another dwelling to the rear was included in this instance, where the parking is currently proposed. Permission was refused for one reason which referred to the concerns with the wastewater pumping station.
- **KCC Reg. Ref. 15/815:** An application for a similar development and the detached dwelling was deemed withdrawn in November 2016 for failing to respond to further information.
- **KCC Reg. Ref. 00/691:** Permission was granted in April 2001 to construct 99 houses, 4 shop units with 5 apartments over shops. This is the parent permission.

4.1.2. In the immediate vicinity:

- **KCC Reg. Ref. 17/460:** Permission was granted in July 2017 for the change of use from commercial unit to an apartment. This is unit 4 within the same block as the subject development.

## 5.0 Policy Context

### 5.1. Kilkenny County Development Plan 2014 – 2020

- 5.1.1. Chapter 3 of the Plan refers to Core Strategy, Chapter 5 to Housing and Community, Chapter 9 to Infrastructure & Environment and Chapter 12 refers to Requirements for Developments.
- 5.1.2. Chapter 3 states that Ballyragget is a “Smaller Town or Village”. Section 3.3.5 notes that the Ballyragget Local Area Plan has expired and is now subject to a map within the Plan which depicts a settlement boundary within which development will be considered. It is further stated that there will be no land use zoning objectives in these settlements. Proposals will be considered on their merits against the policies and objectives of the Plan.
- 5.1.3. Figure 3.3 of the Plan is a map of Ballyragget. The subject site is within the boundary.
- 5.1.4. Section 3.3.5.3 states that development will depend on number of factors including the availability of infrastructure including appropriate waste water treatment facilities, and water supply.
- 5.1.5. Section 12.5 of Chapter 12 refers to Apartments. Tables are included for minimum sizes of apartments, private and communal amenities etc.

### 5.2. Natural Heritage Designations

The River Barrow and River Nore Sac (Site Code 002162) is c.400m to the west.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

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

- Notes applicant purchased the shop unit 13 years ago. Unit was entitled to use the foul sewer system, including the pumping station, in the same way that every other shop and unit in the development does.

- The supermarket unit that was opened subsequently failed and has been empty for several years and is becoming derelict. Photos have been submitted with the appeal.
- Existing apartments above the shop use the same carpark and therefore there is no change with regard to distance from apartments to parking spaces.
- Traffic movements are considerably lower including a reduction in commercial vehicle use which will reduce any traffic hazards.
- Reasons for refusal are difficult to understand given the derelict nature of the site, urgent requirement for accommodation, reduction in perceived traffic hazard, fact that pumping station has sufficient capacity for the very small increase in loading, and applicant has a right to use the system like everyone else in the development.
- Considers it is not the applicant's responsibility to manage or maintain the pumping station and is entitled to use it, as is the owner of Reg. Ref. 17/460 which was recently granted.
- Letter from Engineers who designed the pumping station enclosed confirming there is sufficient capacity. This was not a requirement for Reg. Ref. 17/460.
- Note that the pumping station did not form any part of the application Reg. Ref. 17/460 for the change of use of the shop to an apartment. There was no requirement for open space, waste management, commercial deliveries to adjoining premises, traffic management or landscaping. This application was granted while the subject application was live.
- The refusal to grant permission is nonsensical, unreasonable and without any planning justification and arbitrary.

## 6.2. Planning Authority Response

The Planning Authority responded stating that there was no objection from Irish Water in relation to the recently granted change of use (Reg. Ref. 17/460).

### 6.3. **Observations**

No observations were submitted within the appropriate timeframe.

## 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. I am satisfied that the principle of a change of use from a retail unit to apartments is acceptable. The issues can be dealt with under the following headings:

- Wastewater infrastructure
- Car parking and associated works
- Residential & Visual Amenities
- Appropriate Assessment

### 7.1. **Wastewater Infrastructure**

- 7.1.1. The wastewater pumping station has formed the reason for refusal of permission for the most recent planning applications. Irish Water in their submission on the application recommend a refusal on the basis that it will lead to an increased loading on the pumping station which has not been taken in charge by either Kilkenny County Council or Irish Water, and because the applicant has failed to demonstrate how the pumping station will be managed into the future, or if he has permission to discharge an increased loading to the pumping station.
- 7.1.2. The applicant considers that he has a right to discharge into the foul sewer network in a similar manner to all other shops and apartments within the development and that he is not responsible for the upkeep of the pumping station. A letter from an Engineering firm accompanies the appeal stating that the pumping station has sufficient capacity.
- 7.1.3. A third party submission from an adjoining shop at Planning Authority stage expressed concerns with the sewerage system and states that there is an ongoing problem with the system.



- 7.1.4. While I accept that the applicant considers that he has a right to avail of the use of the pumping station, in the absence of information on file with respect to the capacity of the foul sewerage system, it is not possible to assess the impact of the increased loading on the system. The letter from the Engineers provides no information with respect to the current capacity, remaining head room or any technical information to enable an assessment to be carried out. Furthermore, it is unclear if the applicant has permission to discharge extra loading to the system.
- 7.1.5. Drawing 15-646/PP02 refers to connecting a foul sewer pipe from a new manhole to the pumping station and connecting a storm water pipe from a new manhole to an existing storm pipe but no details are provided.
- 7.1.6. In conclusion, in the absence of information on file with respect to the capacity of the wastewater system, I am of the opinion that it is not possible to assess the potential impact or to ensure that it will not be prejudicial to public health.

## **7.2. Car parking and associated works**

- 7.2.1. The second reason for refusal referred to car parking. The Roads Section sought further information in relation to details of the car parking and landscaping (which I will address below). Drawings indicate that there will be 8 car parking spaces assigned to the apartments. They are indicated to the rear of the car park and furthest away. There is a reference to a low timber fence being used to separate commercial and residential car parking, but no further details are provided.
- 7.2.2. The proposed car parking spaces are the furthest from the proposed apartments, meaning residents will have to negotiate shop unit customer traffic, deliveries etc., as they walk to their apartments. Furthermore, there are no footpaths or footpath markings provided from these spaces adding to the potential traffic hazard.
- 7.2.3. With respect to deliveries to the shop units, it is unclear how these deliveries will continue to operate due to the landscaping proposed. This has implications for the safety and amenities of future residents. An area for deliveries is indicated to the rear of shop unit 3 and 4, but there are no details as to how this area will be segregated.
- 7.2.4. Traffic currently enters the car parking to the rear of the development. The communal area will now extend adjacent to this entrance and access to three of the four apartments is proposed to the rear. There is no information on file, indicating

how this area will be segregated from traffic, thus leading to a potential traffic hazard. There is no traffic calming proposed. I accept that there are apartments at first floor already with access from this area, however, having regard to the proposed communal and private open spaces, there will potentially be more pedestrian movements in this area.

- 7.2.5. In conclusion, I am not satisfied with the proposed car parking arrangements: the spaces are remote from the apartment units; there is little information with respect to how these car park spaces will be separated and assigned to the apartments; there are no footpaths or markings proposed; there is no information in relation to deliveries or commercial vehicles or how these vehicles will be segregated; and, there is no traffic calming proposed to ensure the safety of residents accessing the apartments to the rear or using the communal open areas.

### **7.3. Residential & Visual Amenities**

- 7.3.1. Drawing reference 150646/PP/05 indicates private areas for the apartments and a communal open area. The private areas are north facing but do provide the minimum space required. The drawing indicates that 5 cherry trees are to be planted on the communal area. No details are available on the drawings to indicate how the communal area is to be segregated – it is unclear if a wall or fence or any kind of hard boundary is proposed between the amenity area and the public car park.
- 7.3.2. The drawing indicates that a 2.1m high fence will be located between the private open spaces of Apt. 9 and Apt.10. No information has been provided with respect to the boundary treatment of the other apartment's private amenity areas.
- 7.3.3. No information has been provided with respect to bin storage for the development. A waste storage area is indicated on the drawings to the rear of shop unit 3 and 4. It is unclear if this is for the use of the future residents as well, or where bin storage will be provided, if not.
- 7.3.4. There are items of plant and equipment in the location of the private space for Apt. 7. No information has been provided with respect to where this equipment will be relocated to and as it is equipment related to the cold storage for the butcher, it could potentially create a noise nuisance.

7.3.5. In conclusion, based on the information on the file, I am not satisfied that the proposal is acceptable in terms of residential and visual amenities. The boundary treatment for the private and communal open spaces has not been adequately addressed and the footway access to each apartment unit is unclear – no details of paving or kerbing are provided. I consider that the proposal would have a seriously negative impact on the residential amenities of future occupants of the development.

#### 7.4. **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**

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

### 9.0 **Reasons and Considerations**

1. In the absence of information with respect to the adequacy of the wastewater treatment system serving the site, the Board is not satisfied that the wastewater treatment system has adequate capacity for the proposed increase in wastewater loading. The proposed development would therefore be prejudicial to public health and the proper planning and sustainable development of the area.
2. Having regard to the information on file, it is considered that the proposed development would result in an unsatisfactory standard of residential and visual amenity for future occupants of the apartments by reason of inadequate provision of good quality, properly landscaped, private and communal open space. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The applicant has failed to demonstrate adequate provisions in relation to the car park for: (a) construction details of the footways, kerbing and drainage to the rear of the apartments; (b) commercial delivery details and waste storage; and, (c) traffic calming and the provision of a footpath to the car parking area. The proposal for car parking to serve the apartments is unsatisfactorily located remote from the units. The applicant has therefore not demonstrated that the proposed development would not give rise to traffic hazard and is therefore contrary to the proper planning and sustainable development of the area.

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Ciara Kellett  
Inspectorate

14<sup>th</sup> March 2018