



An
Bord
Pleanála

Inspector's Report 300630-18.

Development	Retain horse harnessing and grooming shed and retain and complete existing stables/domestic shed and retain boundary wall as constructed.
Location	Sheppard Lodge, Loreto road, Killarney, County Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	17/240.
Applicant	Florence and Martin McCarty.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Dan and Carmel Hourigan
Observer	None.
Date of Site Inspection	13 th April 2018.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located at Loreto Road, which is in a suburban part of Killarney town close to the town centre. The site is within a row of detached houses on relatively large sites. On either side of the site (to the east and west are detached dwellinghouses) and to the rear (north) is Rossdara, a medium density housing estate.
- 1.2. The stated site area is 0.18 hectares. The dwellinghouse on site includes a B&B use. At the rear a grassed area is retained and at the northern and western ends of the site are a number of sheds including those which are subject of this appeal.
- 1.3. Photographs of the site and surrounding area, which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. The stated gross floor area of the buildings to be retained is 157 m² and of the existing buildings overall is 388 m².
- 2.2. The development is as described in the application drawings and in the response to the request for further information, which was received by the planning authority on 17th October 2017. The latter refers to proposals for surface water disposal, the extent of the operation and the impact on immediately adjacent boundaries.

3.0 Planning Authority Decision

3.1 Decision

The planning authority decided to grant permission subject to conditions including:

- to be retained in accordance with documentation of 22nd of March 2017, 17th of October 2017 and 10th of November 2017
- Jarvey business operating from the site shall be restricted to one carriage only and a maximum of 2 horses shall be kept on the site at any one time
- the eastern part of stables/domestic shed shall be used for domestic storage purposes only and not for any commercial or agricultural uses

- specific requirements regarding surface water drainage (condition 4) and related matters (conditions 5 and 6).

The development comprises:

- retain existing horse harnessing and grooming shed (15.15 m²)
- retain and complete existing stables / domestic shed (56.4 m² and 85.6m²)
- retain boundary wall.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report dated 6th of December 2017 notes that the scale of the business applied for corresponds with the temporary permission granted by An Bord Pleanála under PL 63.238520. Notes also that a third party submissions appear to accept that this level of commercial activity is appropriate. Other matters relating to control of effluent, surface water and odours can be dealt with by condition. Grant permission to retain.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

No reports received.

3.4. Third Party Observations

Two submission letters were received by the planning authority, both of which object to the development, refer to an increase in unauthorised development since the temporary permission was granted by the Board and consider that the level of development is excessive for this residential area. The letters were presented by the owner occupier of adjacent house (appellant) and by the secretary of Rossdara Residents Committee. Both request that the development be restricted to one jarvey carriage and two horses. It is alleged that the premises has been used by more than one jarvey.

4.0 Planning History

Under PL63.238520 the Board considered an appeal related to a proposed shed and stables of combined area of 157.22 m². The Board considered that the scale of the development to be retained and completed involving the provision of 4 stables might give rise to serious injury to residential amenities in regard to noise and odour. The Board issued a Direction on the 27th June 2012 inviting the applicant to submit revised drawings showing provision for two stables only with the overhang of the stables reduced by 50%, with a holding tank for storage of soiled waters and all rainwater goods to be contained within the site. In the event that the Board considered granting a revised permission it would be for a temporary period of five years to enable the development to be assessed in terms of its impact on residential amenity.

The applicant in response queried details of the Board's request and noted the need to bring horses indoors in poor weather and for other purposes. The letter was accompanied by a drawing which showed three existing buildings along the western site boundary and 4 no. pens (two of which were stated to be for dogs) along the northern boundary. The large shed previously enclosing the pens was not on the drawing.

The Board granted permission subject to conditions including:

- Five year permission
- A maximum of two horses to be kept on site at any one time
- Only two pens to be provided and the other two to be removed
- Requirements relating to water supply and drainage arrangements including measures related to soiled waters, effluent and manure.

The Board is referred to the subsequent correspondence of Killarney Town Council and the appellant which queries:

- Whether revised drawings were received (KTC letter).
- How condition 3 should be interpreted – including whether it was proposed to retain the structure at its existing size and remove internal divisions so that

only two pens remained or whether the building size is to be reduced by the demolition of pens 3 and 4 leaving only pens 1 and 2(KTC letter).

- In a subsequent letter it was interpreted by the Council that the overall scale of the stable development proposed would not have to be reduced provided two pens were removed – the applicant had been so informed (KTC letter).
- The appellant next queried the interpretation of the condition by KTC.
- The Board outlined its position as follows:
 - *The condition was imposed by the Board so as to reduce the overall scale of the development by the omission of two pens. The development shall be carried out in accordance with the plans and particulars as set out in condition of the Order, which plans and particulars would contain details of the dimensions of the stable building. In addition, the Board advised that the submission of a revised drawing clarifying condition number 3 to the planning authority was necessary.*

5.0 Policy Context

5.1. Killarney Town Development Plan 2009-2015

The site is within an area which is zoned Existing Residential.

Policy ED07 – to give consideration to the development of home based activity by virtue of nature and scale, provided they can be provided without eroding the amenities of residential areas. Under section 12.42 it is stated that these uses may be permitted subject to considering the nature and extent of the work, the hours of operation, noise and general disturbance, the levels of traffic generation, the generation, storage and collection of waste.

5.2. Natural Heritage Designations

The nearby Killarney Lakes and environs are designated as

Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC – Site Code 000365 and

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the appeal may be summarised as follows:

- excessive scale of development, which has incrementally increased and which is in excess of what is required to run one carriage and a maximum of 2 horses
- development of a commercial nature is inappropriate in this urban residential area
- proposed development does not conform with development plan
- has or is likely to have had a significant impact on surface waters and wastewater discharges
- storage of farmyard manure is totally unsatisfactory, including in the open bags resulting in smells and condition 6 is incapable of enforcement
- condition 5 appears to authorise use of the septic tank for the collection of farmyard waste and there is no evidence that it is fit for purpose or of sufficient capacity
- the development fails to consider the availability of wastewater services and the surface water regulations 2009 in the assessment of proposals
- the development contravenes objectives of the development plan relating to high quality of life, urban design and urban environment as well as environmental sustainability and residential amenity
- Proposed development is contrary to policy relating to home-based economic activity including in relation to consideration of effect on amenities of adjoining occupiers, arrangements for waste, effluent loading and parking on the storage of vehicles
- 3 jarvey cars operated from the premises during the last tourist season

- the decision of the Board provided that only 2 pens would be in place
- the roof of the development overhangs our client's property
- applicant has consistently failed to comply with planning and development regulations and conditions of the Board's decision
- the planning authority misinterpreted previous decision of the Board
- the Council has erred in finding that the development would not seriously injure the amenities of the area
- Conditions attached to the decision to grant permission are vague and incapable of being effectively enforced.

6.2. Applicant Response

The response on behalf of the 1st party includes the following comments:

- resident and keeping horses at the site for 29 years – additional 12 feet to rear of property purchased some years ago was previously used for horse and carriage hire business
- scale and nature of business is unchanged – operated without complaint until the acquisition of extra land which brought overall holding to almost 1 acre
- waste is properly disposed of (receipt enclosed) and vermin may be related to birdfeeders in appellant's property
- no other residents in the area have an objection and various letters are enclosed to this effect as well as from the operator of the previous business
- we continue to operate the long established and highly rated guest house without complaint from guests
- jarving is a traditional activity in this area, part of the cultural heritage which the Council seeks to protect
- enclosed photographs and submissions from residents, including petition from residents of Rossdara estate.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None.

7.0 **Assessment**

7.1. I consider that the issues arising in this case should be assessed under the following headings:

- Planning history and principle
- Scale and intensity of existing development.

7.2. **Planning history and principle of development**

I consider that some comment on the planning history of the development at this site is appropriate prior to considering the merits of the proposed development.

There is a range of correspondence on file including letters from the appellant and the planning authority received subsequent to the previous appeal decision. In determining the current appeal I consider that the Board should rely on its previous decision as informing the planning history. My interpretation of that decision is that it must rely on the drawing received by the Board on 20th July 2011 from the applicant. The drawing shows 4 no. pens along the northern site boundary and the previously proposed large enclosing stable building was not shown. The 2 no. existing sheds and the 'flat' along the western boundary were shown. In the absence of any information to the contrary I consider that the decision authorised only two pens and in particular it did not authorised the large stable building. There might be an argument that the intention of the Board's Direction may have been to reduce the scale of the stable building by 50% but I consider that there is no evidence that the intention was translated into the final decision, which has to be interpreted based on the applicant's drawings. In addition, there was no requirement for revised drawings and no reference to the enclosing large stable building in the decision.

The context for considering the current planning appeal also must include the temporary permission. The reason for that permission was to enable assessment of the impact of the development in the context of a residential area.

I note also that the Board's decision in its reasons and considerations refers to the historical presence of the business. The Board considered that the proposed development, if permitted, would not so significantly impact on the residential amenities of the area so as to warrant a refusal of permission. I agree with the latter conclusion insofar as I am of the opinion that a suitably scaled and operated enterprise of this nature should be capable of being compatible with the residential amenities of the area and thus in accordance with the development plan policy. Whether the current proposal is of such scale and intensity is considered in the next section of this report.

7.3. Scale and intensity of the development

In terms of the physical scale of the buildings which are to be retained I consider that having regard to the size of the site and the pattern of development in the area there is no likelihood of adverse impacts due to overshadowing and I do not consider that the single storey development would be considered to be visually obtrusive when viewed from other properties. I have no objection *per se* to the retention of the buildings in situ, subject to appropriate use.

Regarding the use which is being carried out at present I note the following information from my site inspection, which took place during normal business hours:

- Two pens are in situ and in use – 2 no. horses were present
- Another horse was in situ in the 'existing harnessing / grooming shed'
- The entire stable building including the part which is described as 'existing domestic shed' is in commercial use involving the storage of carriages, straw and other material- I found no evidence of domestic storage
- The adjoining building to the south, which is described as 'existing shed' is in use for storage related to the jarvey business
- A small lorry suitable for the movement of animals was parked to the south of the large stables building

- There was a number of carriages of various types in situ including in the rear garden.

In terms of the impact on the amenities of the area I note that there is potential for noise, odours and water pollution. Ultimately I consider that successful control of these impacts can arise if the development is of appropriate scale. Management including environmental control measures can be addressed by the conditions along the lines of those recommended by the planning authority.

I consider that the scale of the facility, which is in operation is significantly more extensive than provided for under the previous decision of the Board and appears to be in excess of the applicant's stated proposals under the application documentation. I consider that there is evidence that the scale of this commercial activity is such that it would be deemed to be excessive for this residential area. I refer in particular to the large horse trailer on site and the number of horses. I would not be opposed to a grant of permission for what might be described as a 'one-man' operation. The town centre is nearby and there is a thriving jarvey business related to the national park. I consider that the accommodation of 2 no. horses in appropriate stable accommodation would be acceptable. Provision would also be required to be made for storage of one carriage, food, straw and so on.

My opinion is that having regard to the decision by the Board under the previous permission that there is an established use at this site, which appears to relate to the lands to the rear where the stables are situated, a grant of permission is appropriate.

A second temporary permission would not serve the proper planning and sustainable development of the area and would be contrary to national guidance as set down in *Development Management Guidelines for Planning Authorities*. The Board could however grant a very restrictive permission which could address the concerns of residents. In this regard I recommend a grant of permission subject to the conditions set out in the decision of the planning authority and an additional condition which shall prohibit parking of large vehicles, which are the stated source of early morning noise. That would not preclude parking of a car and small trailer. In the alternative I considered whether a control of hours of operation might be appropriate but decided in favour of restricting parking of large vehicles.

Regarding the issues of overhang I consider that the evidence is limited and that any matters are best resolved as a private legal measure.

There is no objection to the retention of the rear boundary wall. In my opinion the retention of the horse harnessing / grooming shed is unnecessary in the context of the existing adjacent shed to the south. On the other hand I also concluded that the retention of the structure would not give rise to any material planning consequences subject to control on the intensity of use of the business. I therefore decided against a split decision to refuse permission for the harnessing / grooming building.

Notwithstanding the letters of support there are also indications that some local residents consider that the development as operated has given risen to adverse impacts on residential amenity. However, in the main, matters raised in the third party appeal and objections can be addressed by condition. I therefore conclude that a grant of permission is appropriate.

7.4. Appropriate Assessment

The closest Natura sites are:

Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC – Site Code 000365 and

Killarney National Park SPA – Site Code 004038

These are extensive sites with a range of Features of Interest, details of which are available on the NPWS website.

No screening report has been submitted. Having regard to the brownfield nature of this site and the small scale of the development proposed I consider it reasonable to conclude that on the basis of information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated Natura 2000 and that a Stage 2 Appropriate Assessment is not therefore required.

8.0 Recommendation

I recommend that permission be granted for the reasons and conditions and subject to conditions below.

9.0 Reasons and Considerations

Having regard to the planning history, the pattern of development in the area and the historical presence of the jarvey business operating from the site, it is considered that the proposed development would be in accordance with the proper planning and 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 as amended by the further plans and particulars submitted on the 17th day of October 2017 and 10th day of November 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 following shall apply in relation to the use of the development:

(a) A maximum of two number horses shall be kept on the site at any one time and only one jarvey carriage shall operate from the site.

(b) Save for the use of a car and standard horse box there shall be no use of or parking of large vehicles within the site in association with the jarvey business.

(c) The eastern part of the stables / domestic shed labelled 'Existing Domestic Shed' shall be used for storage purposes in association with the use of the dwellinghouse and shall not be used for commercial or agricultural storage.

Reason: In the interest of clarity and to regulate the level of development.

3. The separation between the 'Existing Non Domestic Shed' and the 'Existing Domestic Shed' shall be divided with a solid concrete block wall, which shall be installed within three months of the date of this decision and which shall not contain a connecting door.

Reason : To enable regulation of the development in the interest of the proper planning and sustainable development of the area.

4. The following shall apply in relation to the operation of the development:

(b) All uncontaminated roof waters from the horse harnessing and grooming shed and from the stables / domestic shed shall be piped to the on-site surface water drainage system received by the planning authority on 17th October 2017.

(c) No surface water from the site shall be permitted to flow onto adjoining properties.

(d) All soiled waters from the horse harnessing and grooming shed and from the stables / domestic shed shall be connected to the underground soiled water storage tank, which shall be maintained fully water tight and shall not be permitted to overflow.

(e) All manure shall be removed regularly and not permitted to accumulate on site.

Reason : In the interest of clarity and to protect the residential amenities of the area.

Mairead Kenny
Senior Planning Inspector

22nd May 2018