



An  
Bord  
Pleanála

## Inspector's Report ABP-301583-18

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<b>Development</b>	Change of use of part of public house to 4 residential units
<b>Location</b>	14 Ballymullen, Tralee, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/665
<b>Applicant(s)</b>	Michael Healy Rae
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John O'Shea & Others Bethan & Sean Finucane Michael Horgan
<b>Observer(s)</b>	Joan O'Regan & Seán Finucane Jim Collins
<b>Date of Site Inspection</b>	12 <sup>th</sup> July, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. Nancy Myles public house, 14 Ballymullen, is a two-storey vacant building, located at the southern end of the town of Tralee in County Kerry. It has frontage onto the N86 along a section linking Dan Spring Road and Killerisk Road. The original public house has previously been extended to the rear at ground floor level and the curtilage includes an open yard at the back of the building enclosed by a stone wall and gate. There is a laneway with access onto the N86 adjoining the north-west elevation of the building which serves as access to the rear of residential and commercial properties at this location, including the appeal site. Properties in the immediate vicinity comprise mainly two-storey, terraced structures, in residential use. Murphy's Terrace is located to the north-west of the site. A former military barracks is located on the opposite side of the N86.

## **2.0 Proposed Development**

- 2.1. The development permitted by the planning authority comprises a change of use of part of the public house to four apartments. The change of use applies to the single-storey, ground floor extended area to the rear of the original building. The development would include the provision of windows in the north-west elevation, the provision of doors and windows in the south-east elevation, and the removal of the rear boundary wall to provide on-site car parking.
- 2.2. The original application to the planning authority sought the change of use of most of the ground floor area of the public house and its extended area to the rear to 9 residential units.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 18<sup>th</sup> April, 2018, Kerry County Council decided to grant permission for the proposed development subject to 10 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted development plan policy, the site's planning history, and reports received, and repeated all of the content of third party objections that were made. A request for further information was recommended relating to revising the description of the development, making drawing corrections, compliance with design standards, landscaping, parking standards, flooding, and control of invasive plant species.

#### **3.2.2. Other Technical Reports**

The Estates Unit submitted that there are no shared services to be taken in charge.

The County Archaeologist submitted that no mitigation is required.

The Municipal District Technician requested details on the car parking numbers to comply with development plan standards.

The Biodiversity Officer considered there would be no significant effects on European sites and requested management proposals to control invasive plant species.

### **3.3. Prescribed Bodies**

Transport Infrastructure Ireland stated that it had no observations to make.

### **3.4. Third Party Observations**

Third party submissions were made to the planning authority by Michael Horgan, James Collins, the owners and occupiers of Nos. 4-11 and 17 Murphy's Terrace, Bethan and John Finucane, and Joan O'Regan and others. The grounds of the appeals reflect the principal planning issues raised.

3.5 A request for further information was issued by the planning authority on 4<sup>th</sup> September, 2017 and a response was received from the applicant on 8<sup>th</sup> March, 2018. The submission revised the development to four residential units to the rear of the original building at ground floor level and associated parking to the rear. New public notices were included.

- 3.6 In the interim period, a report from the Fire Officer stated that the Fire Authority had no objection to the planning application.
- 3.7 Following the submission of further information, further third party submissions were made by Michael Horgan, Joan O'Regan of the Castlemorris Residents, Bethan and Michael Finucane, Letti Young and others, and Anne Fitzgerald and others.
- 3.8 The reports to the planning authority after receipt of further information were as follows:

Transport Infrastructure Ireland submitted that its position remained the same as its previous submission.

The Biodiversity Officer requested more information on the management of Japanese Knotweed.

The Municipal District Technician set out a schedule of conditions.

The Planner noted the response to the further information request and repeated the content of the third party objections that were made. The principle of the development was accepted, parking provision was seen to meet standards, and the apartments were viewed as meeting design standards. The development was not seen to have a negative impact on the amenities of residents in the area. Other issues raised by third parties were seen to be adequately addressed. A grant of permission was recommended.

#### 4.0 **Planning History**

I note the following from the Council's Planner's report relating to previous applications to the planning authority:

*P.A. Ref. 88/53* – retention of windows

*P.A. Ref. 98/155* – extension to pub and new entrance porch

*P.A. Ref. 99/215* – extension to rear

*P.A. Ref. 02/149* – retention of signage and front alterations

## 5.0 Policy Context

### 5.1. Tralee Development Plan 2009-2015

#### Zoning

The site is zoned 'Residential' with the objective "To protect and improve residential areas and to provide for facilities and amenities incidental to those residential areas."

#### Development Management

Provisions relating to apartment development include:

##### *Minimum Overall Apartment Floor Areas*

One Bedroom - Minimum floor size 45m<sup>2</sup>, minimum storage size 3m<sup>2</sup>.

##### *Private Open Space in Apartment Developments*

Private open space may be in the form of rear gardens or landscaped courtyards, terraces/patios for ground floor units and balconies at the upper levels ... These spaces shall be sited to take advantage of sunshine and provide shelter and privacy.

##### *Public Open Space in Apartment Developments*

Public open space should be designed to maximise light, amenity and to provide a range of spaces to accommodate all occupiers.

The minimum public open space standards to apply to one bedroom apartments is 10m<sup>2</sup> per apartment.

##### *Parking*

The parking standard for development in the town's suburbs is 2 spaces per apartment unit.

## 6.0 The Appeal

### 6.1. Grounds of Appeal by John O'Shea & Residents of Ballymullen

The grounds of the appeal may be summarised as follows:

- The proposal would seriously injure residential amenities, depreciate property values, and would be an unwelcome precedent for the area.
- The removal of the rear boundary wall would compromise private amenity areas.
- Reference is made to structural and fire safety deficiencies of the proposal.
- Vehicular access is a safety hazard.
- The building is subject to flooding.
- There is a Knotweed issue on lands in the vicinity.
- There is a lack of clarity on the proposal and for the remaining part of the building not included in the application.
- Concerns are raised about the adequacy of car parking.

## 6.2. **Grounds of Appeal by Bethan and Sean Finucane**

The grounds of the appeal may be synthesised as follows:

- The building has been subject to flooding.
- There is a lack of clarity on the remaining part of the building not included in the application.
- The proposal amounts to overdevelopment of a limited site.
- Vehicular access would be wholly inadequate and dangerous.
- The owner of the lane to the rear of the property is not willing to give permission for the back wall to be knocked down to accommodate parking.

## 6.3. **Grounds of Appeal by Michael Horgan**

The grounds of the appeal raise concerns in relation to the heavy volumes of traffic on the adjoining public road, the use of part of the building as a private house, and refers to two refusals of permission by the Board for proposed developments in the

vicinity. The appellant also referred to enforcement action affecting the property the subject of the appeal.

#### 6.4. Applicant Response

The applicant's response to the appeals may be summarised as follows:

##### Response to John O'Shea & Others

- The target market for the development is professional people working in the hospital. The design was adjusted to accommodate current standards and is to accommodate people who wish to temporarily reside in the area.
- The rejuvenation of the property would enhance the area.
- Most properties have removed or part removed rear walls for parking and access.
- Regarding the building fabric, the change of use is governed by the Building Regulations and will require a Fire Safety Certificate and Disability Access Certificate. All apartments typically have independent access.
- Car manoeuvres will not significantly increase due to the development and would be much larger if the building reopened as a public house.
- The applicant is aware of flooding in the area but the building has not flooded in the past.
- Knotweed is present in the vicinity but there are no visible signs on the site. Measures will be taken to ensure any works are free from the weed.
- The application process was carried out as instructed by the planning authority.
- The upper floor area over the bar is residential. The use of any parts of the building not included in the application will retain the historic or permitted use.
- Eight parking spaces meet development plan requirements.

### Response to Bethan and Sean Finucane

- The property has not flooded in the past.
- The first and second floors are residential.
- The development is in keeping with the residential usage of the area.
- The proposal has much less requirement for parking than a public house.
- The access lane is availed of by all property owners in the area for pedestrian and vehicular access to the rear of their properties. The applicant is legally entitled to do the same.
- The wall to the rear is owned by the applicant and he is legally entitled to knock it.
- The application process was carried out as instructed by the planning authority.
- The upper floor area over the bar is residential. The use of any parts of the building not included in the application will retain the historic or permitted use.

### Response to Michael Horgan

- Car manoeuvres will not significantly increase due to the development and would be much larger if the building reopened as a public house.
- A separate house adjacent to the site does not form part of the application.
- The appellant's reference to other applications are not similar in scale and location to the proposal.
- There is no active enforcement on the property.

## **6.5. Planning Authority Response**

I have no record of any response to the appeals from the planning authority.



## 6.6. Observations

### Observation by Joan O'Regan & Seán Finucane

The observers raise concerns in relation to the long-term plans for the building, parking, excessive density of development and the poor quality of the residential units.

### Observation by Jim Collins

The observer refers to a refusal of permission for a ground floor extension to the public house on the site dating from 1999 and raises concerns in relation to the lack of provision of a footpath and impact on properties on Murphy's Terrace.

## 7.0 Assessment

### 7.1. Introduction

I consider that the principal planning issues relate to the appropriateness of the development to meet occupiers' needs, the impact on residential amenity, and traffic impact. A number of other issues raised will be considered also.

### 7.2. Appropriateness of the Proposed Development

7.2.1 The existing public house is located on lands zoned for residential purposes in a suburban area within the town of Tralee. It is a fully serviced site that adjoins residential properties. In principle, the conversion of the building to residential units can be seen to be compatible with the zoning objective for this area.

7.2.2 Notwithstanding the compatibility with the zoning objective, there are serious concerns about the nature and extent of development proposed for this site. The original submission to the planning authority was for the conversion of the ground floor of the public house to nine bedsits. This proposal was seriously substandard for human habitation purposes in terms of space, light, amenity, parking, etc. The proposal ultimately permitted by the planning authority was for four apartments in the rear section of the ground floor of the public house. I note from my site inspection that the existing building is undergoing significant works internally at ground floor

level and above. The public house has effectively been cleared out and preparations have been, and are being, made for new works.

7.2.3 There are a number of concerns about the development of this site, in particular those relating to the suitability of the site and structure to accommodate the development proposed and the quality of the development to serve any occupants of the proposed apartments the subject of the development before the Board. With regard to the suitability of the site and structure, I note that the proposed development seeks permission for four apartments to the rear of the public house at ground floor level. It has been clarified by the applicant that the use of any parts of the building not included in the application will retain the historic or permitted use. This means that the public house at ground floor level immediately forward of apartments 1 and 2 is to remain a public house. It also means that the upper floors of the building are to remain in residential use, although it is not known from the appeal file if this is to be one or more residential units. I put it to the Board that this is a site that cannot accommodate the form and scale of development being proposed. It cannot meet the needs of permanent residents, those working at the public house, and the associated clientele. The serviceability of all uses cannot be facilitated on this site while seeking to provide a basic standard of accommodation for residents of the structure. The totality of what is proposed is clearly overdevelopment of a restricted site. One cannot isolate the proposed four apartments from all else that is proposed within the structure and determine that that component of the overall development is acceptable without having regard to the consequences of all that is proposed to occur on this site.

7.2.4 Further to the above, I seriously call into question the viability of the proposed apartments as living spaces that would have a standard of amenity to permit habitation in a satisfactory manner. I note that the proposed apartments each just meet the very minimum floor area standards. I acknowledge the separate code of the Building Regulations and the need for a Fire Safety Certificate and do not propose to address matters of detail beyond the scope of this appeal. I do, however, note the proposed layout and the intended uses for the building. The Board can see from the submitted drawings the layout of apartments 1 and 2 relative to the public house and the partition-style arrangement of separating walls between units and uses internally. It is my submission to the Board that there must be serious concerns about the

functioning of such units as separate residential units relative to the public house in terms of noise, nuisance, disturbance, and everyday functioning as separate residential units and a public house. Further to this, I have serious concerns about the level of services provided to meet the amenity needs of residents, adequacy of storage for a functioning public house, etc. Designating separate private amenity spaces around a yard area and designating another area within the yard as communal amenity space, each of which is corralled in by car parking which lines the back end of the yard (which is open to the adjoining lane due to the proposed removal of a rear boundary wall) will not produce functional, meaningful amenity spaces for occupants of the proposed apartments. In the understanding that the four apartments meet the very minimum floor area standards permissible for one bedroom apartments, it is imperative that quality functional amenity spaces are provided. It is again understood that this yard area seeks to serve the proposed four apartments in isolation of whatever else is proposed for the remainder of the building. While I accept that the proposed development seeks to convert part of an existing structure and is not a new apartment block, very basic provisions are essential for intended occupants to allow them to inhabit the proposed apartments to an acceptable standard.

7.2.5 Overall, I must conclude that the proposed development, taken together with what is proposed for the remainder of the structure, constitutes very significant overdevelopment of a restricted site. This development will provide a substandard form of accommodation for the occupants of the proposed apartments and would most likely have serious adverse consequences for the functioning of the remainder of the building in terms of meeting basic standards for residents and the needs of a public house.

### 7.3 Impact on Residential Amenity

7.3.1 I have noted above the consequences of the proposed development on occupants of the existing structure in the event of the proposed development proceeding. Having regard to the proposed residential use, its location in a residential suburb, the established structure and its layout relative to neighbouring dwellings, and the lack of overlooking, overshadowing, etc. arising from the proposed development, I do not

consider that the conversion of the proposed ground floor section of the building to residential use would have a significant adverse impact on the amenities of neighbouring residents.

#### 7.4 Traffic Impact

7.4.1 Having regard to my considerations earlier in this assessment, I am satisfied to conclude that the site and proposed layout cannot adequately meet the parking and servicing needs of the four proposed apartments, the residential accommodation over ground floor level and likely storage arrangements for a functioning public house. I accept that the structure was previously in use as a public house, with residential accommodation above and, thus, there must be some allowance for that which previously existed in terms of servicing and parking associated with those uses. However, it is apparent that the layout of the proposed development to serve the needs of the occupiers of the four apartments in isolation will not meet basic essential needs of the other occupiers of the structure also.

7.4.2 With regard to access onto the N86 and the suitability of the adjoining lane to accommodate traffic accessing the proposed parking area, I acknowledge that the existing road is a very busy stretch of public road. It is, however, within a 50kmph section of the road within the town and there is no impediment of sightlines when accessed from the lane. Crossing the road at this location is difficult at times due to the volumes of traffic but is not unprecedented in such urban locations and crossing facilities are and can be provided to meet pedestrian needs on this road. Further to this, I note that the lane proposed to serve cars associated with the development is 5.0 metres and more in width between flanking buildings. It can adequately accommodate the volume of traffic associated with the residential use on this site without constituting a significant traffic hazard.

#### 7.5 Miscellaneous Issues

A variety of other issues have been raised by parties to the appeal. My considerations on the relevant planning issues are as follows:

- The issue of flooding of the existing property was raised by a number of third parties. The applicant has submitted that the property has not been subject to flooding. I have no information to conclude that the existing structure has previously been subject to flooding and do not consider that it is a matter that is of concern relating to the proposed change of use.
- It has been submitted that approval for the removal of the rear boundary wall to allow for the provision of on-site parking has not been given by the owner of the lane. The wall in question forms the rear boundary of the site and I have no information to determine that the removal of such a wall by the applicant requires permission from a separate third party.
- It is apparent that there is an issue with Japanese Knotweed in the vicinity of the site but that there is no information to suggest that there is a Knotweed concern relating to the site itself. Appropriate precautions would be required to be taken at the construction phase which could be undertaken by the developer in the event of permission being granted and subject to such measures being agreed with the planning authority.
- With regard to procedures and the application process, I note that the applicant has submitted that the process was undertaken as instructed by the planning authority. I also note that all parties to the appeal had a clear understanding of the nature and extent of the development proposed and, furthermore, that parties were not excluded from making submissions to the Board after the decision of the planning authority.

## 8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reason and considerations.

## 9.0 Reasons and Considerations

Having regard to:

- the restricted nature of the proposed site and the structure the subject of the proposed change of use relative to the scale of total development proposed to be accommodated therein,
- the retention of the existing public house use and the residential use over ground floor level,
- the layout and internal arrangements of the proposed apartments relative to the existing public house,
- the inadequate provision of private and public amenity spaces to serve the needs of occupants of the proposed residential units within the overall structure,
- the inadequacy of the site to accommodate the servicing of the existing public house arising from the proposed development, and
- the inadequacy of on-site parking to accommodate the needs of residents within the overall development,

it is considered that the proposed development would constitute a gross overdevelopment of the site, would provide a substandard form of accommodation for the occupiers of the proposed residential units within the building, and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Kevin Moore

Senior Planning Inspector

2<sup>nd</sup> August, 2018.