



An
Bord
Pleanála

Inspector's Report ABP-301626-18

Development	Removal of 7 penthouse apartments
Location	Coolegrean, Killarney, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/170
Applicant(s)	Axinite Investments Ltd.
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Dark Stone Developments
Observer(s)	None
Date of Site Inspection	11 th July, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The assisted living apartment block is located at the northern end of the town of Killarney in County Kerry. It is located to the west of 'Killarney Nursing Home' on the west side of Rock Road, a principal approach to the town centre. The building is constructed and is undergoing some works internally. It comprises a long block which is two-storeys in height at its northern end that rises to four-storeys in height at its southern end. The building is flanked to the west by undeveloped land and to the north by 'Holy Cross Gardens Nursing Home'.

2.0 Proposed Development

2.1. The proposed development would consist of the retention of the removal of 7 penthouse apartments in an assisted living apartment block. This arises from storm damage that occurred in 2014. The block was previously the subject of permission under Planning Authority Ref. 07/204675. The floor area of the penthouse apartments totalled 419.88 square metres. The development reduces the 66 unit block to 59 units.

3.0 Planning Authority Decision

3.1. Decision

On 19th April, 2018, Kerry County Council decided to grant permission for the proposed development subject to one condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, reports received, and a third party submission. It was stated that the assisted living apartments were built as part of a retirement village and that the block was to provide 66 apartments. It was further stated that in February 2014 the seven penthouse apartments were severely storm

damaged and that a decision was taken on safety grounds to remove them. The new roof line was considered acceptable and a grant of permission was recommended.

3.2.2. Other Technical Reports

The Estates Unit submitted that the apartments are not to be taken in charge and that the bond for the overall development should be reconsidered if necessary.

3.3. Prescribed Bodies

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

3.4. Third Party Observations

A submission was made by Dark Stone Developments. The grounds of the appeal reflect the issues raised.

A response to this submission was made by the applicant disputing the grounds of objection.

4.0 Planning History

P.A. Ref. 07/204675

Permission was granted by the planning authority for the development of an integrated retirement village, consisting of a nursing home, an assisted living apartment building and 15 independent living units.

5.0 Policy Context

5.1. Killarney Town Council Development Plan 2009-2015

Zoning

The site is zoned 'Existing Residential'.

Housing of the Elderly and Persons with Special Needs

The specific needs of the elderly and people with disabilities and special needs are required to be considered in the design and location of housing units. The Plan notes that both sheltered and independent living units are required.

Policy HSG – 05

It is a policy of the Council to co-operate with appropriate organisations in the provision of specifically designed accommodation.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be summarised as follows:

- The application should have been invalidated as the site boundaries have not been outlined in red, not the building which misrepresents the extent of the site in the applicant's control. The application shows the applicant owns some 5.5m along the western side of the building when it only owns 1 metre. The applicant did not furnish documentary evidence of ownership of its property.
- The applicant described the development as "the completed assisted living apartment block". Work remains ongoing internally and further works were recently carried out by way of laying and connecting sewers, works which are the subject of Restraining Orders. The works resulted in the applicant trespassing on the appellant's lands. As the site boundary has varied substantially from that which was granted permission, the development description should have included "retention within revised site boundaries".
- The application is not in compliance with the Building Regulations.

6.2. Applicant Response

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

- The Board is asked to dismiss the appeal as it is submitted that it is without substance or foundation, failing to raise any substantive issues of relevance to the proposal.

- On the issues raised in the appeal, it is submitted:
 - Irrespective of where the legal ownership of the site actually lies, determination of the precise boundary has no substantive impact on the current proposal.
 - The apartment block was constructed and completed in 2008/2009 but was never occupied. The property has benefitted from substantial improvement works in the last twelve months and they do not require permission. The drainage system has been modified in recent months to ensure occupation was not delayed. The description of the development is accurate and does not mislead the public.
 - The application is compliant with the Building Regulations. A report attached with the planning file confirms this.

A letter from Clúid is attached with the response referring to its involvement with the development.

6.3. Planning Authority Response

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

7.0 Assessment

7.1. I note that the extent of the proposed development relates solely to the penthouse component of the assisted living block at this location. There is no dispute that the proposed block, excepting the penthouse, comprises a development the subject of a planning application previously granted planning permission under Planning Authority Ref. 07/204675. Considering the context of the proposed development and the character of the remaining development without the added penthouse, I am of the opinion that the retention of the omission of the penthouse poses no adverse visual, structural or other functional impact on the development of the residential block as assisted living units. I, therefore, seek to address only those issues the subject of the appeal.

7.2. I again note that the proposed development relates solely to the retention of the omission of the penthouse of the overall block. The application details, in highlighting

the block as being the site, wholly incorporates the area to which the proposed development relates. The matters of concern of the appellant relating to the overall landholding at this location, which are the subject of Court proceedings, are not matters of consideration for the Board in this appeal.

- 7.3. The proposed development seeks to retain the removal of the penthouse residential units associated with the development of the assisted living block. The proposed development is adequately described in the application details and does not mislead in any manner.
- 7.4. Notwithstanding the applicant submitting a report to the planning authority on the building's compliance with the Building Regulations in response to the appellant's submission to the authority, the Board will note that the issue of fire safety falls under the Building Regulations code and is a matter for the Fire Authority.
- 7.5. In conclusion, the Board may consider dismissing the appeal under section 138 of the Planning and Development Act 2000, as amended. In light of the assessment above, I recommend that permission is granted.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to the zoning provisions for the site as set out in the Killarney Town Development Plan 2009-2015, to the established assisted living block on the site, and to the design, character and layout of the remaining residential block, it is considered that, subject to compliance with the condition set out below, the proposed development would not seriously injure the residential or visual amenities of the area and would, otherwise, 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.

Reason: In the interest of orderly development.

Kevin Moore
Senior Planning Inspector

2nd August 2018