



An
Bord
Pleanála

Inspector's Report ABP 301830-18

Development	3 houses
Location	Scrahane, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/1208
Applicants	Adrian Hegarty & Timmy Joe Fleming
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Mike Hegarty Jnr.
Observer(s)	None
Date of Site Inspection	26/07/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site is as previously described on appeal ref. PL08.248189 wherein the Board refused permission for 3 dwellings in 2017.

The site, which has a stated area of 0.077 hectares, is located on the northern side of April Avenue, to the western side of Muckcross Road (the N71 National Road) approximately 1km south of Killarney town centre.

The surrounding area is characterised by a variety of suburban housing estates, some larger individual dwelling houses (a significant proportion of which are in use as guesthouses or B&B's) and intermittent commercial developments with a notable prevalence of hotel accommodation. The 3 storey Holiday Inn is located opposite the appeal site on a corner site at the junction of April Avenue and Muckcross Road. Cahernane Meadows which is an estate of two storey dwellings is to the west of the site with a green space separating the site from the nearest houses. The rear garden area associated with a dwelling which fronts onto Muckcross Road bounds the site to the north with the shared boundary delineated by a concrete wall. The 2 and 3 storey Killarney Inn guesthouse bounds the site to the east with a timber fence along the shared boundary. From the plans submitted and my observations on site it appears that the subject appeal site once formed part of the overall Killarney Inn site.

The site is rectangular in shape and presently vacant. It is bounded by a c.1.8m high stone wall along its southern and western boundaries. April Avenue is tree lined on both sides with approx. 6 mature trees planted along the northern side of the avenue adjoining the appeal site frontage.

2.0 Proposed Development

The application was lodged with the planning authority on the 06/12/17 with unsolicited further information received 17/01/18 and further plans and details submitted 07/03/18 & 19/04/18 following a further information request dated 06/02/18 and clarification of further information request dated 27/03/18.

The proposal, as amended, entails the construction of 3 no. dwellings on the site comprising of 2 no. three storey (3rd floor recessed) and 1 no. two storey units.

1st floor windows serving bedrooms to the rear elevations are to be angled with the 2nd floor windows in the 3 storey units to serve bathrooms and walk-in wardrobes.

The height of the three storey units is stated to be 9.397 metres with the 2 storey unit which is to be positioned along the boundary with the Killarney Inn guesthouse to the east having a stated area of 7.897 metres.

Rear garden depths are approx. 4.260 sq.m. and have stated areas of 87 sq.m.

The dwellings are to be served by individual accesses from April Avenue and 2 no. off street parking spaces. The stone wall along the road frontage is to be retained save for the new entrances with a new stone wall to the western boundary. The existing concrete wall to the rear is to be retained with a 1.8 metre high wall to be constructed along the eastern boundary.

The external finishes are to be mix of brick and plaster with cladding detail.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 15 conditions addressing standard planning and engineering requirements.

Condition 9: Notwithstanding the exempted development provisions the provision of overnight commercial guest accommodation is precluded.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Executive Planner's report notes that given the location of the site within an established residential area where semi-detached dwellings are the prevalent house type, the proposed development of 3 dwellings is more in keeping with the character of the area than the previously approved 4 apartments. The proposal endeavours to address the previous reasons for refusal. It is considered that the reduction in dwelling height next to the guesthouse helps to lessen the visual impact from Muckross road. A request for further information (FI) is recommended on connection to the public sewer, boundary treatment, additional photomontages from Cahernane

Meadows and Muckcross Road and measures to prevent the flat roof to the rear being used as a roof terrace. The 2nd report following FI recommends clarification of FI on sewer connection. The 3rd report dated 15/05/18 (countersigned) following clarification of FI notes that the concept 3D views show that the dwellings will not be visually obtrusive and will be in keeping with the prevailing character of the area. It is considered that the previous reasons for refusal have been addressed. The scale and bulk of the houses have been reduced and the dwellings are a more suitable scale. The private amenity space provided meets the criteria set out in the Killarney Town Development Plan. A grant of permission subject to conditions recommended. The report includes an EIA sub-threshold screening report and AA screening.

3.2.2. Other Technical Reports

Irish Water in its 1st report recommends FI on connection to the public sewer. The 2nd report dated 27/03/18 following FI requires clarification of FI on same. The 3rd report dated 11/05/18 following clarification of FI has no objection subject to conditions.

Housing Estates Unit in a report dated 04/01/18 recommends FI on site services, access, public lighting and boundary treatment. A 2nd report dated 16/03/18 following FI refers to the comments made previously.

3.3. Prescribed Bodies

TII has no observations.

3.4. Third Party Observations

Observations received by the planning authority are on file for the Board's information. It is considered that the current proposal does not sufficiently differ from that previously refused permission. Issues arising relate to overdevelopment and residential amenity.

Representations made on behalf of the applicant to the planning authority are also on file.

4.0 Planning History

PL 08.248189 – permission refused in August 2017 for 3 dwellings on the site. The two reasons can be summarised as follows:

1. The proposal would represent significant overdevelopment of the site, would have an overbearing appearance and would be visually obtrusive. It would seriously injure the residential amenities of adjoining property and would be contrary to the zoning objective for the area.
2. The proposal would provide a limited quality of residential amenity for future residents by virtue of the short depth of rear garden spaces, its northerly aspect and concerns of overshadowing.

15/416 - permission granted for two number dwelling houses, including all necessary ancillary works.

07/204831 - permission granted for 4 number apartments. Extension of duration of permission granted to 24/06/2018.

5.0 Policy Context

- 5.1. Killarney Town Development Plan 2009-2015 as extended pursuant to Section 11 of the Planning and Development Act, 2000, as amended.

The site is zoned 'Existing Residential' with the stated land use zoning objective to provide and improve residential amenities. Dwellings are permitted uses.

Paragraph 12.10.4 states that within the town centre a higher density of development may be considered where it is felt that such an infill development would integrate with the streetscape. The development will, however, be required to comply with the standards set out by the Planning Authority in the Development Plan. Higher densities will not be appropriate in every circumstance. Higher densities must not be achieved at an unacceptable amenity loss to the surrounding dwellings and residents of the proposed development.

Paragraph 12.26.1 states that within the town centre infill development and refurbishment schemes will be required to pay particular attention to the local architectural character and materials used.

Paragraph 12.26.2 states that development will only be considered if it:

- Will not detract from the character of the area
- Will not be detrimental to the residential amenities of the area
- Will not be prejudicial to the proper planning and development of the area.

Contemporary infill developments will be considered on their own merits.

5.2. Killarney Municipal District LAP 2018 -2014

I note that the LAP is at draft stage. In same the site is zoned existing residential.

Objective KL-R-05 - Ensure that residential densities reflect the density of appropriate adjoining developments. Higher densities will be considered in the town centre or within close proximity to the town centre.

5.3. **Natural Heritage Designations**

None in the vicinity

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The 3rd Party appeal can be summarised as follows:

The reasons for refusal given in the previous appeal on the site under ref. PL08.248189 have not been addressed.

6.2. **Applicant Response**

The response by teicniuil-priory Consulting Engineers on behalf of the applicant can be summarised as follows:

- The scale, bulk and height of the proposed development has been significantly reduced from that previously refused permission. The height has been reduced in the 3 storey units with the 3rd dwelling reduced to 2 storey.

- The design will complement the existing developments on April Avenue while injecting a new contemporary feel to contrast with the mature foliage and stone walls.
- In terms of overdevelopment the Inspector in her report on the previous appeal states that the density was acceptable and that the site coverage at 43% was in accordance with the Killarney Town Development Plan.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

7.0 **Assessment**

As noted above this constitutes the 2nd appeal on the site with respect to a development in which 3 no. dwellings are proposed. Since the previous appeal the permission for 4 no. apartments granted under ref. 07/204831 has expired. There remains an extant permission for 2 no. dwellings under Reg. Ref. 15/416.

As noted by the Inspector on the previous appeal the site is within an area zoned residential in the current Killarney Town Development Plan (as extended) with the objective being to provide and improve residential amenities. The proposed development on an infill site is acceptable in principle within this zoning objective. Notwithstanding, a balance has to be struck between the reasonable protection of amenities and privacy of adjoining dwellings, the protection of the established character of the area and the need to provide residential infill.

As noted in the previous appeal the proposal has an approx. site coverage of 43% which is in accordance with the site coverage standard of up to 50 % for residential development as set out in paragraph 12.9 of the Town Development plan. The density of 39.9 per hectare also accords with the plan provisions of between 30 – 40 units per hectare (paragraph 12.10).

I consider that the issues arising in this case are the matters detailed in the previous reasons for refusal and can be summarised as follows:

- Visual Impact
- Residential Amenity
- Other Issues

7.1. **Visual Impact**

I submit that the main changes between the development refused permission under ref. PL08.248189 and the current proposal are as follows:

- The number of three storey dwellings has been reduced from 3 to 2 with 1 no. two storey unit now proposed along the eastern section of the site adjoining the Killarney Inn guest house.
- Reduction in the height of the three storey units from 10.666 metres to 9.397 metres. The height of the two storey unit is 7.897 metres.
- Replacement of 1st floor windows flush with the rear wall with angled 'window pods'.
- Omission of 1st floor terraces to the rear elevation of the 3 storey units and replacement with mono-pitch zinc roofs which are not accessible.

As revised, the 3 storey units will have a lower overall height than that of the 2 no. dwellings permitted on the site under ref. 15/416 which had a maximum height of 9.5 metres. The height of the dwellings as permitted relative to that proposed is outlined on the Contiguous Elevation Drawing No. 81-16-108. Having regard to the relative setback of the site from the two storey dwellings in Cahernane Meadows to the west and the open space and mature planting in-between I consider the proposed height of the 3 storey units would not present as a dominant feature in the streetscape and are acceptable.

The revision of the housing design adjoining the eastern boundary to two storey, stepping down from the 3 storey units to the Killarney Inn, provides for a more appropriate scale of development in proximity to the guesthouse. I note that the 2 storey unit has a comparable setback from the guesthouse to that of the 2 storey dwelling granted permission under ref. 15/416. With the proposed two storey

dwelling having an overall height of 7.897 metres, which is 1.6 metres less than that permitted, I consider that the proposal provides for an improvement in terms of potential impact on the amenities of the said property.

I am therefore satisfied that the previous concerns regarding the visual impact and dominance of the scheme along April Avenue have been addressed and that the proposal will not detract from the visual amenities of the area. I consider that the photomontages reflect this improvement relative to that previously proposed. I also note that save to facilitate access the stone wall and trees along the road frontage is to be retained which will assist in assimilating the development. I therefore consider that the 1st reason for refusal attached to the previous decision on site has been addressed.

7.2. Residential Amenity

Whilst the height of the three storey dwelling units have been reduced by 1.269 metres the rear garden depths remain largely as previously proposed at 4.2 metres, although the staggered building line to the rear provides for a greater depth at 8.40 sq.m. over part. Having regard to the infill characteristics of the site I submit that the strict application of the 11 metre garden depth requirement of the current Town Development Plan to unreasonable. A balance needs to be struck in ensuring the appropriate level of development on such scarce, zoned and serviced lands in proximity to the town centre, whilst ensuring that the amenities of both adjoining property and those of prospective applicants are ensured.

Whilst each garden area is stated to be 87 sq.m. in area I do not consider this to be the case and I estimate that the garden areas are more reasonably calculated between 68 and 70 sq.m. Notwithstanding, these would comply with the minimum requirements as set out in the Town Development Plan for town centre sites. Although having a northern orientation I consider the reduction in the height of the dwellings from that previously proposed and the staggered rear building line providing for greater depth across part, would result in a reasonable level of amenity being provided. I note that the 2 no. 3 storey units will have the benefit of south facing terraces at 2nd floor level.

In order to address the concerns in terms of the potential for overlooking to the north from 1st floor windows the dwelling design has been modified omitting the window

openings flush with the rear wall (which were to incorporate opaque glazing) and their replacement with angled window openings with east and west orientation thereby precluding overlooking. The first floor windows in the 2 storey unit face away from the Killarney Inn adjacent. In addition, the 1st floor terrace feature to the rear of the 3 storey units has been removed and replaced by a mono-pitch roof. Windows at 2nd floor level are to serve ensuite/walk in wardrobes, only, and would be fitted with opaque glass. This can be secured by way of condition.

On balance I consider the revised scheme addresses the concerns previously cited in the 2nd reason for refusal in terms of residential amenity both of prospective occupants and of property in the vicinity specifically that to the north.

7.3. Other Issues

Environmental Impact Assessment

Having regard to the nature and scale of the proposed development on an infill, zoned and serviced site in proximity to Killarney town centre, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment

Having regard to the nature and scope of the proposed development on an infill, zoned and serviced site in proximity to Killarney town centre it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

Having regard to the foregoing I consider that the scheme as proposed, in terms of its layout, design and unit height, strikes a reasonable and appropriate balance between the protection of the amenities of the area and of adjoining property with the need to achieve an effective and sustainable use of such under-utilised, zoned and serviced lands in proximity to the town centre. I therefore recommend that

permission for the above described development be granted for the following reasons and considerations subject to conditions

9.0 Reasons and Considerations

Having regard to the residential zoning of the site in the current Killarney Town Development Plan, the pattern of existing development in the area and the planning history of the site, it is considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with the zoning objectives for the area, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would provide for a satisfactory level of residential amenity for prospective occupants. 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, as amended by the further plans and particulars submitted on the 7th day of March 2018 and the 19th day of April 2018, 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 replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the dwelling.

3. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the proposed houses shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity.

4. The 2nd floor windows in the northern elevation of the three storey dwellings serving the ensuite and walk in wardrobes shall be permanently fitted with obscured glazing.

Reason: In the interest of protecting the amenities of adjoining property

5. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

6. Water supply and drainage arrangements including the attenuation and 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.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional

circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures, measures to prevent pollution to local watercourse and off-site disposal of construction and demolition waste.

Reason: In the interests of public safety and residential amenity.

9. All service cables associated with the development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting the development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the

matter shall be referred to An Bord Pleanala to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Pauline Fitzpatrick
Senior Planning Inspector

September 2018