



An
Bord
Pleanála

Inspector's Report ABP.302501-18

Development	Change of use from store to apartment
Location	Slieve Bloom Manor, Muckross Road, Killarney Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/159
Applicant(s)	Brendan Cleary
Type of Application	Planning permission
Planning Authority Decision	Grant s.t. conditions
Type of Appeal	Third party
Appellant(s)	Neil & Marie Burke and Ted Kiely
Observer(s)	None
Date of Site Inspection	23 rd October 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located on Muckcross Road in Killarney Town, approx. 800m to the south of the Town Centre. Muckcross Road forms part of the N71, (Ring of Kerry). The site is on the western side of the road halfway between the Flesk Bridge and Countess Road. This stretch of Muckcross Road is characterised by large detached houses, a significant number of which are guest houses and B&Bs, with some hotel accommodation. The surrounding area is largely residential with several suburban housing estates to the rear of the houses fronting Muckcross Road. The appeal site is located in the middle of a row of four large detached houses on large, rectangular plots. The property to the north is 'Fuscia House' which is in operation as a B&B, and is owned by one of the appellants. The property to the south is a detached 2-storey house and is owned by the other appellant, Ted Kiely. Beyond this lies Harmony Inn and the Holiday Inn. There is a housing estate to the immediate west, Roseville, which backs onto the rear boundaries of the row of houses.
- 1.2. The site is in use as a B&B, 'Slieve Bloom Manor'. It is a large 2-storey building, (c. 683m²), which has been extended to the rear by means of 2-storey and single storey extensions. Access is gained from Muckcross Road by means of a recessed shared entrance with Fuscia House. Both of these properties comprise substantial guest houses with large areas of hard surface car parking to the front. The site area is given as 0.16ha. The main structure is set back almost 30m from the roadside boundary and accommodates approx. 16 parking spaces to the front and a further 2 spaces to the rear.
- 1.3. The rear extension is mainly located along the northern side of the site and stretches c. 22m westwards from the main rear elevation. It is c.8m wide, which represents roughly half of the width of the main house. The extension is generally set back c.10m from the southern boundary and c.1.5m from the northern boundary. The house itself is set back c. 4m from the southern boundary. However, there is a further single-storey conservatory extension with associated patio area centrally located alongside the southern elevation of the rear extension. There is also a car port located to the west of the rear extension, which has a number of solar panels on the roof. To the east of the car port, there is a narrow, raised lawn/planting area, c. 6m deep, which stretches along the rear boundary of the site.

- 1.4. The majority of the main rear extension is 2-storeys in height, but drops to a single-storey flat-roofed structure just to the east of the carport. The structure is attached to the main extension and is in use as a store. It is this flat-roofed structure which is the site of the proposed change of use to an apartment, that is the subject of the current application/appeal.

2.0 Proposed Development

- 2.1. Permission is sought to convert the existing single-storey, flat-roofed store attached to the western gable of the 2-storey extension to the main house to an apartment for the private use and occupation of the owners of the commercial B&B establishment. It is also proposed to extend the structure to the east and to add a second floor. The existing store is L-shaped with the eastern end extending the full width of the main extension and the western end recessed so that it is flush with the front of the car port. It is proposed to 'square' the footprint by adding an additional c.8m². Effectively, this would mean that the 2-storey extension would be extended by a further c.6m to the west
- 2.2. The proposed apartment consists of a kitchen/dining and living room at ground floor (34.5m²) and two ensuite bedrooms at first floor level (30.1m²). The overall floor area of the structure would be increased from 48.5m² to 82.5m². The proposed development would result in the removal of two first floor west-facing windows and it is proposed to replace these on the north-facing and south-facing elevations of the main extension, respectively.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant subject to five conditions. These were generally of a standard type. Condition 5 required that the proposed apartment and the existing B & B shall remain as an integral unit in one ownership and that the apartment shall not be used for commercial guest accommodation. Condition 2 required the payment of a general development contribution of €2,484.00.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the proposed development would necessitate elevational changes to the northern and southern elevations (Bedrooms 9 and 10 existing) by means of the introduction of additional windows on these elevations. It was further noted that these windows and the proposed north/south facing windows on the proposed apartment elevations could give rise to overlooking issues. It was considered, however, that the proposed development could be revised such that the north facing windows would be omitted and the south facing ones minimised in conjunction with alterations to the internal layout of the apartment at first floor and the amalgamation of Bedrooms 9 and 10.

Further information was requested in respect of the matters highlighted above on the 16th April 2018. It was requested that the description of development include the proposed elevational changes.

3.2.2. Other Technical Reports

Roads – (26/03/187) – no issues from a roads perspective.

3.3. Prescribed Bodies

TII – (20/03/18) - no observations to make.

Irish Water – (26/03/18) – no objection subject to conditions.

3.4. Third Party Observations

Ted Kiely, Neil Burke and Marie Burke (appellants)– Objections raised as follows:

- Overlooking and overshadowing – loss of privacy due to proposed windows on north and south facing elevations, particularly overlooking a conservatory and patio to the north. The proposal would also block light and sunlight.
- Visual intrusion – The development of Nos. 1-4 Muckross Mews in the rear garden of the property several years ago has reduced the visual amenity of adjoining properties and this will be exacerbated by the proposed development.

- Drawings inaccurate – the existing store is used as guest accommodation.
- Intended use of apartment – it is claimed that the apartment is to be used for long term letting.

3.5. Response to Further Information

The applicant responded to the FI request on the 25th May 2018. Revised plans were submitted and revised notices were issued on 11th July 2018 (with prior revisions on 21/06/18, 5/07/18, which were deemed to be unacceptable). The FI response may be summarised as follows:

- The description of development was changed (final notices 12/7/18) to “Permission to change use of existing store to private living accommodation/apartment and to carry out elevational changes.”
- Confirmation that the apartment is intended for the use of Brendan and his wife, both of whom have recently retired. Their son, Jonathon, now runs the business.
- The revised drawings (25/05/18) indicate that Bedrooms 9 and 10 would be amalgamated into one bedroom with a south-facing window only. The first floor of the apartment has been altered with the omission of the north-facing and south-facing windows respectively and the introduction of two west-facing windows instead.

A further submission was made by the observers, but no new material issues were raised. Permission was recommended subject to conditions.

4.0 Planning History

08.248504 (Reg. Ref. 16/1238) – The Board refused permission (October 2017) for the construction of a rear extension to the existing guest house at second floor level (5 additional guest bedrooms), including the construction of a private living accommodation unit, alterations at first floor level and the retention of the conversion of 8 bedrooms to four holiday suites complete with fire escapes. Reason for refusal was based on the restricted nature of the site and its overall design, scale, height and relative position to the site boundary, which would result in detriment to

residential amenities of adjoining residential properties by reason of visual obtrusion, overbearing impact, overlooking and overshadowing.

5.0 Policy Context

5.1. Development Plan

Killarney Town Development Plan 2009-2015

The site is located in an area zoned as Existing Residential. The objective for this zone (12.3.3, as amended by Variation 1 adopted 5th December 2011) is to provide and improve the residential amenities of existing residential areas. The existing residential character of this area should be retained. 12.3.3 (as amended by Variation 1) includes a “moratorium on multiple housing or apartment schemes (2 or more residential units). In general, the Council shall not be in favour of sub-division of either existing dwellings into 2 or more units or existing sites (for the provision of extra dwellings), where such development would lead to congestion of layout, overdevelopment of the site and would tend to detract from the residential amenities of properties in the immediate vicinity. I note that Variation No. 4 (which was adopted in December 2018) omits the element regarding subdivision of sites.

Housing Protection Areas (Section 3.6) were established arising from pressures identified in the Plan on established residential areas for back land and infill development not in keeping with the traditional settlement pattern, due to the proximity of such areas to the town centre. Neither the subject site nor the adjoining lands form part of such a Housing Protection Area.

Land use Zoning and Development Management Standards are contained in Chapter 12. The objective for Existing Residential is set out in **12.3.3** as To Provide and Improve Residential amenities. However, this was replaced in Variation No. 1 (Aspect 6), which inserted a more detailed paragraph relating to the retention of the existing character and the moratorium on multiple housing developments in such areas. This will be discussed in the Assessment section of my report. **12.20.1** Apartments – this policy, which had sought to direct apartment development to the town centre was deleted from the Development Plan by Revision 27 of Variation 4 (Dec. 2018).

12.64 addresses Commercial Guest Accommodation, which are normally allowed in residential areas. However, the amenities of existing residential areas should be preserved and improved and adequate private amenity and car parking space should be provided.

I also note that there is a **Draft Killarney Municipal District Local Area Plan 2018-2024**, which had not been adopted at the time of writing this report.

5.2. Natural Heritage Designations

The Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (000365) lies approx. 270m to the south and the Killarney National Park SPA (004038) is located approx. 500m to the north of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal was submitted by HRA Planning Consultants on behalf of the appellants. The main points raised may be summarised as follows:

- Contravenes Development Plan policy – The proposed development of a self-contained apartment, (which would be for the use of the retired owner and his wife, whilst his son would operate the business, but reside off-site), would change the business model/usage of the property. This private apartment would not be linked to the operation of the business and would operate as an entirely separate entity/place of permanent residence. Thus, the proposal must be considered as a separate residential unit within the site. This contravenes the provisions of the Killarney Town Development Plan as there is a moratorium in Existing Residential areas on development of multiple housing or apartment schemes (2 or more units). Furthermore, Section 12.20.1 of the Plan states that apartments should not be developed in established residential areas and should be directed to the Town Centre.

- Apartment standards – the design of the apartment is substandard as it is not dual aspect, the ground floor ceiling height is inadequate and the internal storage space has not been complied with.
- Residential Amenity – The proposed development would result in overshadowing, overbearing impact and visual impact on the property to the north, having regard to the height, scale and relative proximity to the site boundary. The proposal does not address the reason for refusal of 248504. The existing building is positioned 1 metre (at its widest) from the northern boundary and the proposed extension would extend the length of the building on this boundary to 44.2m. This would lead to an overbearing impact and a perception of being overlooked. It would also further exacerbate the loss of sunlight and daylight to the property to the north. It would also result in overlooking and an overbearing impact on the domestic house to the south.
- Public notices – the public notices, as initially submitted, were incorrect. Notwithstanding the subsequent revisions to the notices, it is considered that the revised notices do not adequately describe the development as proposed in that there is no reference to the first-floor extension. The P.A.'s decision is therefore ultra vires and should not be determined by the Board.
- Unauthorised development – The existing building is in use as a B & B but an examination of the submitted plans shows that it comprises four self-contained holiday suites. Thus, the proposal seeks to extend an existing unauthorised use and development, and should be refused.

6.2. Planning Authority Response to grounds of appeal

The P.A. has not responded to the grounds of appeal.

6.3. First party response to grounds of appeal

The grounds of appeal are strongly refuted. However, the response is mainly in the form of a rebuttal of the grounds. A number of points of relevance have been made as follows:

- It is claimed that the appellants, Mr and Mrs Burke, no longer reside at Fuscia House and now live off site.
- The premises are not subdivided and there are no self-contained units on site. The Planning Officer and Enforcement Officer from the P.A. have inspected the site and were satisfied with the current use. No Enforcement or Warning Notices have been issued.
- The proposed apartment is solely intended for the occupation of the applicant and his wife in their retirement, which is entirely in accordance with the 'National Positive Ageing Strategy'.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Compliance with Development Plan policy;
- Design of apartment and apartment standards;
- Residential amenity;
- Unauthorised development
- Public notices.

7.2. Compliance with Development Plan policy

7.2.1. The site is located in an established residential zone, but the character of the area is not homogenously residential. Muckross Road is a long straight road with a wide carriageway which is flanked by unusually large plots (1500-2000sq.m). The houses and structures are generally detached and set well back from the road. A significant number of these houses have been converted to guest houses/B & Bs and a number of small hotels have been constructed. There are several commercial premises along the road also. As Muckross Road is the main approach from Killarney town to the National Park, (including Muckross House and Gardens), it is an important route within the tourism infrastructure of the town. The Development Plan (12.64) states that commercial guest houses will normally be allowed in residential areas subject to the proviso that the residential amenities of existing properties are preserved. The zoning objective for this zone also seeks to protect and improve residential

amenities. Thus, it is considered that any development which relates to the expansion or consolidation of the guest house use would be acceptable in principle, provided that the residential amenities of the neighbouring properties were not adversely affected.

- 7.2.2.** The appellants, however, consider that the proposed development is for an independent private apartment, which it is submitted has no connection with the B&B, and that as such, the proposal should be assessed in terms of the provision of a second dwelling unit on the site. It is correctly pointed out that the Development Plan (as varied by Variation 1), had imposed a moratorium on multiple dwelling units in established residential areas. It was further pointed out that 12.20.1 had stated that apartments should be located in the town centre and not in such residential areas. However, the latter provision (12.20.1) has been deleted from the Development Plan by Variation 4 (adopted December 2018).
- 7.2.3.** It is considered, however, that the apartment unit, as currently proposed, is not designed or intended for use as an entirely independent dwelling unit. The layout indicates that it would form an integral part of the overall development as it does not have a separate entrance or delineated boundary. The information submitted by the applicant as FI stated that the intention of the proposed apartment is for the accommodation of the existing owner and his wife, who intend to retire and continue to live on the premises and to help out their son, who has taken over the running of the business. This is further reflected in the P.A.'s decision. Condition 5 required that the proposed apartment and the existing B & B shall remain as an integral unit in one ownership and that the apartment shall not be used for commercial guest accommodation. This condition has not been appealed and the applicant has raised no objection to it.
- 7.2.4.** Thus, the proposal currently before the Board differs from that under 248504 in this important respect. A further material difference is that the Development Plan has been varied in the meantime to allow for apartments in existing residential areas in order to encourage more sustainable development. Thus, the presumption against an apartment in such a location is no longer part of the policy framework. It is considered, therefore, that provided that the proposed apartment remains as an integral part of the existing development, is not occupied as a separate entity, and is not sold separately, it would be in accordance with the provisions of the current

Development Plan (as varied). Should the Board be minded to grant permission, it is considered that a similar condition should be attached to any such permission.

7.3. Design of apartment and apartment standards

- 7.3.1.** Notwithstanding the conclusions drawn in the preceding section, the appellants have submitted that the apartment should be assessed in accordance with the standards for apartments “Sustainable Urban Housing: Design Standards for New Apartments”, (2015). It is noted, however, that the Inspector’s report on 248504 had included such an assessment of the proposed apartment which is almost identical to that currently proposed. It is noted that the Inspector had concluded that the proposed apartment design and layout was generally in accordance with the required standards, apart from a floor to ceiling height of 2.45m, (rather than the recommended 2.7m), at ground floor level; the lack of identified internal storage space; and the lack of a dedicated private amenity space. It is considered that these matters could either be addressed by means of condition, given that the floor area (82.5m²) is well in excess of the minimum standard, or could be relaxed, given the intended use of the apartment and the considerable plot size with low site coverage (c.25%).
- 7.3.2.** The appellants have also raised the issue of dual aspect, which it was submitted was inadequate. However, it is noted that the proposed apartment (as revised 25/05/18) has windows on two elevations (north and south) at ground floor level and on the western elevation at first floor level. It is considered that this is in accordance with the standards in the Apartment Guidelines, as there is no requirement for every room to be dual aspect.

7.4. Residential Amenity of occupiers of adjoining sites

- 7.4.1.** The appellants consider that the proposed apartment would result in serious injury to residential amenity by reason of overlooking, overshadowing and having an overbearing impact on visual amenity. It is further submitted that the proposed development does not address the reason for refusal of the previous proposal (248504), which was primarily refused on similar grounds. The Board should note, however, that although the proposed apartment formed one element of the previous scheme, the current scheme is substantially different to that previously before the Board.

7.4.2. The previous scheme sought to add a further floor of accommodation at second floor level comprising 5 additional guest bedrooms, in addition to the proposed apartment, and further alterations to the existing accommodation. That scheme also included several windows on the northern and southern elevations, (facing each of the appellants), at both first floor and second floor levels, as well as a new external fire escape at the northern elevation. The current scheme does not include any three-storey elements or new fire escapes and the windows on the northern elevation have been omitted in the revised elevations (25/05/18). There is just one new window on the southern elevation which is to Bedroom 9 of the existing accommodation, compared with several windows at first and second floor levels on the previous southern elevation. This bedroom is an amalgamation of Bedrooms 9 and 10, as requested by the P.A., and the window is necessitated by the positioning of the proposed apartment to the west of this room. This window is located approx. 11m from the southern boundary, which is defined at this location by tall trees. It is further noted that the boundary with Fuscia House to the north is defined by a wall which is at least 2m high and that there is a row of tall mature trees along the middle section of this boundary, which extend close to the site of the proposed apartment. It is considered, therefore, that the proposed development (as revised 25/05/18) has addressed the issue of overlooking.

7.4.3. The height and scale of the development has been significantly reduced compared to the scheme that was refused by the Board. The proposed first floor to the apartment would increase the wall height (to eaves) by c.2.1m for a distance of c. 6.25m and the ridge height (7.67m) of the main extension would be continued for a similar distance. The apartment element of the previous scheme was flat-roofed with a lower overall height (5.8m) but would have been c. 800mm taller close to the boundary. The second-floor accommodation proposal would have also increased the height of the main extension alongside the northern boundary to 8.67m for a distance of 18m. In addition to windows on this elevation, it was proposed to introduce a fire escape from a door at second floor level on this elevation. The combination of the height, scale, design and proximity to the boundary was considered by the Board to result in visual obtrusion and an overbearing impact. It is considered, however, that the height, scale, mass and bulk of the current proposal is

significantly less than that of the previous scheme and would not result in visual obtrusion or an overbearing impact.

7.4.4. The proposed apartment development could result in some degree of increased overshadowing of the property to the north. However, from my site inspection and from an examination of the photographs included in the Inspector's report on 248504, it is noted that this boundary is defined by a high wall (at least 2m) and a continuous row of tall, mature trees on the appellant's side of the boundary. It is likely that the wall and vegetation would cast shadows over the garden and conservatory/windows at present. It is considered, therefore, that the proposed structure would not significantly increase the level of overshadowing of the garden and rear facing windows of the property to the north.

7.4.5. In conclusion, it is considered that the proposed development, as revised on 25/05/18, adequately addresses the reason for refusal of the previous scheme on the site and would not give rise to serious injury to the residential amenities of adjoining properties.

7.5. Unauthorised development

7.5.1. The appellants believe that the presence of the four self-contained suites within the existing guest accommodation amounts to unauthorised development and that the Board should, therefore, refuse the development as it would facilitate unauthorised use and development. An examination of the submitted plans indicates that the accommodation in question comprises larger guest rooms complete with a sitting area and a small kitchenette. The applicant's agent has advised that the P.A. has visited the premises and inspected the rooms but did not raise any concerns. It was further noted that no enforcement notices or warning letters have been issued.

7.5.2. The suites seem to be consistent with the overall use of the building as a guest house. However, the determination of whether or not the use is authorised and/or enforcement action is required is a matter for the P.A., not the Board. Given that the P.A. has not raised any issues, yet is aware of the situation, it is considered that this issue in itself would not warrant a refusal of the application.

7.6. Public notices

7.6.1. The appellants raised concerns that the public notices were inadequate and that the revised notices did not go far enough in terms of describing the proposed

development. I would agree that the description should have ideally included the addition of a first floor. Should the Board be minded to grant permission, it could decide to require the republication of the notices. However, I would point out that the parties most affected by the proposed additional floor are the appellants, who are aware of the development, who made submissions to the P.A. and who are parties to the appeal.

7.7. Environmental Impact Assessment

- 7.7.1.** Having regard to the nature and scale of the development, 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.

7.8. Appropriate Assessment

- 7.8.1.** The site is located within 500m of two Natura 2000 sites. The Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (Site code 000365) is located c.270m to the south and the Killarney National Park SPA (Site code 004038) is located c.500m to the north. Given the distances involved, that the commercial use of the site is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1.** It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Killarney Town Development Plan 2009-2015 (as extended and varied), to the nature and scale of the development and to the existing pattern of development in this suburban location, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity and 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 25th day of May 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 amending or replacing them, the existing guest house and the proposed apartment shall be occupied as a single integral unit, in single ownership and shall not be sold, let or otherwise transferred or conveyed, save as part of the existing guesthouse/dwelling on the site, as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.

Reason: In the interests of residential amenity.

3. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provisions replacing them, no room in the proposed apartment shall be used for the purposes of providing overnight paying guest accommodation unless authorised by a prior grant of planning permission.

Reason: In the interests of residential amenity.

4. The external finishes of the proposed apartment (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Mary Kennelly
Senior Planning Inspector

16th January 2019