



An
Bord
Pleanála

Inspector's Report ABP 302846-18

Development	Change of use from office to holiday apartment accommodation.
Location	38 New Street, Killarney
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/825
Applicant	Ann Govan
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Martin Walsh
Observer(s)	None
Date of Site Inspection	23/01/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

This constitutes the 2nd appeal on the subject site. File ref. PL08.249418 refers.

No.38 New Street in Killarney town centre, is a three storey terraced building comprising a mix of residential, office and retail units. Access to the residential units is via a gated laneway.

2.0 Proposed Development

The proposal entails the change of use of the 1st floor from office to residential use. It is proposed to be used as holiday accommodation. The stated floor area of the unit is 63.78 sq.m.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 4 conditions. Condition 1 states that the proposed change of use to a one bedroom holiday apartment shall be carried out in accordance with the plans and particulars lodged.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report notes that the previous proposal relates to a residential apartment with the current application proposing holiday accommodation. Given Killarney's place as a major tourist destination the proposed change of use to a holiday apartment is acceptable in principle. The Ministerial Guidelines do not specifically mention holiday apartments. Given this lack of guidance it is considered that the requirement for private amenity space for a holiday apartment would not be the same as a residential apartment. The apartment meets all of the other requirements in terms of floor space and storage. The application is taken on its merits as a one bedroom holiday apartment. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Fire Authority has no objection subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to those in the 3rd party appeal summarised in section 6.1 below.

4.0 Planning History

2018 - PL 08.249418 (17/555) – Permission refused on appeal for change of use of the first floor from office to apartment accommodation at 38 New Street for the following reasons and considerations.

Having regard to the planning history of the site, to the site configuration and to the pattern of development in the vicinity, it is considered that the proposed development, by reason of the lack of provision of private or communal open space, would constitute overdevelopment on a restricted site which would set a precedent for similar development in the area, would result in a substandard level of residential amenity for prospective occupants and would, therefore, seriously injure the residential amenities of future occupants. Furthermore, the proposed development would be contrary to Ministerial Guidelines in relation to apartment development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2007 – 07/4779 –Permission granted to retain and complete the existing building of 4 no apartments, 1 no retail unit and 2 no offices at No 38 New Street, Killarney subject to 19 conditions.

2005 - PL63.211111 (Reg Ref 04/4256) – Kerry County Council issued notification of decision to grant permission for the demolition of an existing building to construct

1 No. retail unit and 5 no. apartments 38 New Street, Killarney, County Kerry subject to 18 no conditions. The applicant appealed condition No 14 that required the payment of a financial contribution in respect of car parking.

Adjoining Site

2018 - PL08.249266 (16/1304) - Permission refused on appeal for alterations to existing house, construct pedestrian alleyway, demolish existing rear extensions and construct 4 no. apartments at 39 New Street, Killarney. The reason for refusal stated that by reason of its layout and design the proposal would constitute undesirable and haphazard backland development on a restricted site which would set a precedent for similar development in the area, would result in a substandard level of residential amenity for prospective occupants and would seriously injure the amenities and depreciate the value of property in the vicinity by reason of overlooking and loss of privacy.

5.0 Policy Context

5.1. Development Plan

Killarney Town Development Plan 2009-2015

The site is within an area zoned town centre within which residential is a permitted use.

Section 12.20 – Regard shall be given to the relevant Government Guidelines on Design Standards for Apartments.

Section 12.21.1 - Development of residential apartments shall be provided with amenity open space within the site (exclusive of car parking space) solely for the residents at a rate of 10 sq.m. for a one bedroom apartment and 20 sq.m. for a two/three bedroom apartment.

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Griffin Project Management on behalf of the 3rd party appellant can be summarised as follows:

- The proposal does not comply with the Department of Environment, Community and Local Government Design Standards for Apartments. None of the rooms comply with the minimum floor areas/dimensions set out therein.
- Inadequate storage is provided.
- No private amenity space is provided.
- Windows directly overlook adjoining property. It does not comply with the Building Regulations with regard to notional boundaries and separation distance from adjoining boundaries.
- The existing development at No.38 New Street does not comply with the permission granted under ref.07/4779 as follows:
 - The communal landscaped area has been closed off and is in the sole use of an apartment to the rear.
 - The projecting windows are level with the boundary rather than set back 700mm
 - The boundary wall has been considered on the adjoining property.
 - Magnetic flowmeters and grease traps have not been installed.
- The entrance to the laneway is locked contrary to the requirements of the Fire Certificate.
- The inclusion of holiday accommodation within a residential complex will result in anti-social behaviour and would compromise the residential amenities.

6.2. Applicant Response

The submission by Paddy O'Donoghue Consultant Engineer on behalf of the applicant can be summarised as follows:

- There is no reason why the proposal would give rise to anti-social behaviour.
- Communal open space is not required to serve holiday accommodation.
- The proposal complies with the minimum floor areas for 1 bedroom apartments as set out in the Ministerial Guidelines.
- The issue of compliance with a previous grant of permission has no bearing on the proposal. All issues were dealt with prior to retention permission being granted.

6.3. Planning Authority Response

None

6.4. Observations

None

7.0 Assessment

The current proposal constitutes the 2nd appeal for change of use of the 1st floor office unit in No.38 New Street to residential accommodation. The floor plans for a one bedroom unit are the same as that previously proposed. The substantive difference in this instance is that the applicant proposes to use the unit for holiday accommodation.

I note the concerns raised that the proposal does not comply with the Building Regulations or the requirements of the Fire Safety Certificate. Issues of compliance with the Building Regulations and the Fire Safety Certificate are not planning issues. I do not propose to deal with these issues in this assessment. These are matters for Kerry County Council.

I further note the concerns raised that the parent premises at No 38 New Street as constructed is not in compliance with the terms and conditions of planning

permission Reg Ref 07/4779. Issues of non-compliance with conditions is a matter for the Local Authority and not An Bord Pleanála. I do not propose to deal with this matter in this assessment.

I note that the proposed one bedroom unit complies with the standards as set out in Appendix 1 of the Design Standards for New Apartments Guidelines for Planning Authorities issued in 2018 in terms of room sizes, storage etc. With regard to the concerns raised that the apartment will overlook adjoining properties I am satisfied that there will be no significant loss of amenity to adjoining properties as a result of the proposed change of use. In addition I submit that there is no basis on which to suggest that the use of the unit for holiday accommodation would give rise to anti-social behaviour.

I consider that the substantive issue arising in the case pertains to the provision of open space, both private and communal, to serve the unit. I submit that this constituted a material consideration in the Board's decision on the previous case.

At the outset the agent for the applicant contends that as the unit is to be used for holiday accommodation, only, access to private or communal open space is not necessitated. I note that the current Killarney Town Development Plan in terms of both its residential policies and objectives, its zoning provisions for town centres and development management standards for apartments does not distinguish between occupancy types in that there is no differentiation or allowances made for units used for short term/holiday let as is proposed in this case. These policies provisions would have been applicable at the time of the assessment of the previous application.

However, I note that the policy context in terms of guidelines for planning authorities has altered in that subsequent to the previous Board's decision under ref.

PL08.249418 the Design Standards for New Apartments - Guidelines for Planning Authorities were issued in 2018. The guidelines note that aspects of the previous apartment guidance have been amended and new areas addressed in order to, among other things, make better provision for building refurbishment and small-scale urban infill schemes. As in the Town Development Plan the document does not make specific reference apartments for short term holiday use. Therefore, I submit that the provisions as set out therein would apply to the current case.

I note that the guidelines now allow for a relaxation of private and communal open space requirements on a case by case (subject to overall design quality) in building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha (see paragraphs 3.39 and 4.12). I also note that in paragraph 6.9 planning authorities are requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and 'over the shop' type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements.

I submit that in the context of the current guidelines, a relaxation in terms of private and communal open space would be appropriate in this town centre location with the unit effectively comprising an 'over the shop' unit. As noted by the Inspector on the previous appeal the previously identified communal open space at the rear of the site has been closed off, is in the sole use of the adjoining ground floor apartment and is not available to other occupants in the building. I would concur that the said space, as developed, in terms of its location only provides meaningful benefit to the said apartment. To insist on communal access to meet standardised requirements would diminish the residential amenity of all tenants. I also note that Killarney is well served by quality public parks and amenities.

Appropriate Assessment

Having regard to the nature and scale of the proposed development on a serviced site within Killarney town centre and the distance to the nearest designated site no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Environmental Impact Assessment

Having regard to the nature and scale of the proposed 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.

8.0 Recommendation

Having regard to the foregoing I 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 nature and scale of the proposed development on a site within Killarney town centre, the pattern of development in the area and the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued in March, 2018 by the Department of Housing, Planning and Local Government, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would constitute an appropriate form of development at this town centre location 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, 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 proposed apartment shall be used for short-term tourist accommodation only, and shall not be used as a place of permanent residence.

Reason: In the interest of clarity

3. 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.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2019