



An
Bord
Pleanála

Inspector's Report ABP-303152-18

Development	Development of Community Primary Healthcare Centre and Pharmacy.
Location	Shantraud , Killaloe , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	17926
Applicant(s)	Action Enterprises Ltd
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First and Third Party
Appellant(s)	1. Action Enterprises Ltd. 2. Brian and Riona Grogan
Observer(s)	None.
Date of Site Inspection	20 th of February 2019.
Inspector	Karen Hamilton

1.0 Site Location and Description

1.1. The site consists of a relatively flat agricultural field facing onto Convent Hill, Killaloe, Co. Clare. Convent Hill (L 3076) radiates south west from the small town of Killaloe and on the opposite side of the road are the local GAA grounds, national school and graveyard. To the east of the site, adjacent to the entrance, is a row of single storey bungalows and directly west is a large two storey medical building. The site extends north onto Hill Road which is characterised by residential properties, the Lakes Nursing Home and associated residential buildings.

2.0 Proposed Development

2.1. The proposed development would comprise of the following:

- Part single storey, part two storey, Community Primary Healthcare Centre and Pharmacy;
- The Primary Healthcare Centre facility will provide for HSE Services, General Practice, floor space for non-allocated private healthcare consultancy and health service meeting rooms, administrative offices, staff accommodation, reception and associated uses;
- External works to the structure including roof plant and signage.
- The proposal also includes a new entrance off Convent Hill, a pedestrian link to Hill Rd parking, circulation, external amenities (including landscaping) lighting an ESB substation, an ESB substation and all associated services with connection to public services and all associated site works

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 13 no. conditions of which the following are of note:

C 2- Full details of each occupier of the pharmacy and additional healthcare accommodation units shall be submitted to and agreed in writing with the Planning

Authority prior to occupation of each unit and no change of use is permitted even if the use constitutes exempted development.

C 3- Submission of all external signage, lighted permitted only spot lighting, no awnings or canopies etc. without a separate permission and no erection of external roller shutters.

C 11- Monitoring of ground works by a qualified archaeologist and recording of any findings.

C 12- Submission of a landscape plan for the written agreement of the Planning Authority reflecting the alterations to the overall site in terms of re-location of the pharmacy.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information as summarised below:

1a) The capacity of the existing wastewater treatment plant at Killaloe/ Ballina is limited. The applicant liaised with Irish Water in relation to the connection to the wastewater. Irish Water are currently advancing a Capital Investment Plan project to upgrade the plant, currently at design stage, and a storm tank element is required to increase the capacity.

1 b) An Appropriate Assessment Screening Report had regard to proposed works for upgrading the wastewater treatment plant and concluded there would be no impact to the Lower River Shannon SAC (Site Code 002165) and a Natura Impact Statement was therefore not required.

2) The proposal includes a Pharmacy. It was clarified that the Pharmacy would be a separate standalone premises and not specifically integrated into the GP practice as national guidance precluded any business interest between prescribing GPs and dispensing medication. The Pharmacy is a permitted use under the mixed use zoning. The location of the Pharmacy was altered to provide greater overlooking and inclusion of windows. The vitality and viability of the town centre will be enhanced by the development of the primary health centre.

3) A revised drawing illustrating the inclusion of a 3m wide path along Hill Street was submitted, which should be extended and end at a hammer head.

3.2.2. Other Technical Reports

Roads – No objection subject to conditions

3.3. Prescribed Bodies

Irish Water- No objections to the proposal.

Department of Culture, Heritage and the Gaeltacht- No objection subject to archaeological monitoring.

3.4. Third Party Observations

Five third party submissions were received and the issues have been reiterated in the grounds of appeal and are summarised below:

- A right of way through the site has not been accommodated.
- Lack of capacity in the wastewater treatment plant.
- The proposal would negatively impact the town centre.
- The retail pharmacy is not part of the extant permission.
- There are already four pharmacies in the town centre.

4.0 Planning History

PL03.236664 (Reg Ref No 09/105)

Permission which consists of a Primary Health Care Centre (2775m²) over two levels accommodating a shared reception and a number of health care and twelve semi-detached dwellings providing sheltered housing for the elderly with associated parking and site works.

The permission received an Extension of Duration (EOD) in Reg Ref No 15/565 until 29th of August 2020.

Condition No 2 - submission of a Traffic Management Plan.

Condition No 4 -submission of full details of all occupiers to be submitted for the written agreement of the Planning Authority.

Condition No 5- the provision of footpaths internally and connecting to existing footpath along the local road L 3078.

Condition No 8- submission of a right turning lane along the L 3076.

PL03.212366 (Reg Ref 04/2227 & Reg Ref 04/2284)

Permission refused for the construction of 10 no. dwellings and 14 no. dwelling (respectively) as it was premature pending the upgrade of public sewerage facilities.

PL03.212367 (Reg Ref 04/2272)

Permission refused for a crèche and four apartments as it was premature pending the upgrade of public sewerage facilities.

5.0 Policy and Context

5.1. Development Management, Guidelines for Planning Authorities, 2007.

5.2. Clare County Development Plan 2017-2023

Volume 3(c) – Killaloe Municipal District Written Statement and Maps

The site is zoned as mixed use in the Killaloe settlement plan.

The use of land for ‘mixed use’ developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/ retail development as the primary use with residential development as a secondary use.

On lands that have been zoned ‘mixed-use’ in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted.

- Killaloe is identified as a small town.

Section 3.2.3 Linked Settlements

Killaloe/Ballina the linked settlement crosses the County boundary as well as the River Shannon. While retaining their own identities, these settlements, due to their

proximity to one another and their complementary roles, will be encouraged to work together to generate the critical mass of population to act as a focus for service provision and economic growth for their surrounding rural areas.

Objective CDP 5.21 Healthcare facilities

It is an objective of Clare County Council:

- a To facilitate public, private and community based agencies to provide appropriate healthcare facilities, including hospital care and community-based primary care throughout the County, where practical;
- b To encourage the integration of appropriate healthcare facilities into new and existing communities.

CDP8.24 Water Services

It is an objective of the Development Plan:

- a To work closely with Irish Water to identify and facilitate the timely delivery of the water services required to realise the development objectives of this Plan;
- b To facilitate the provision of integrated and sustainable water services through effective consultation with Irish Water on the layout and design of water services in relation to the selection and planning of development areas and the preparation of master plans;
- c To ensure that adequate water services will be available to service development prior to the granting of planning permission and to require developers to consult Irish Water regarding available capacity prior to applying for planning permission;
- d To ensure that development proposals comply with the standards and requirements of Irish Water in relation to water and waste water infrastructure to facilitate the proposed development.

5.3. Natural Heritage Designations

The site is located c. 700m to the west of the Lower River Shannon SAC (site code 002165).

5.4. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

Two grounds of appeal are submitted by both an appellant and the applicant in relation to a condition and I have summarised each of these separately below:

6.1.1. First Party appeal against Condition No. 2

- Condition No. 2 requires the submission of full details of each future occupier of the pharmacy and additional healthcare accommodation units, to the planning authority prior to occupation of each unit. No change of use shall take place other than with the consent of the Planning Authority whether or not such change of use would but for the terms of the conditions constitute exempt development.
- This condition is considered unnecessary and irrelevant to planning.
- The occupant or operator of the pharmacy or healthcare accommodation will not give rise to any material planning or further consideration by the Planning Authority.
- The test of relevance of conditions, as per The Development Management Guidelines for Planning Authorities, is referenced below.
- Necessary- the permission could not have been refused based on the preference for one type of pharmacist or medical consultant.
- Relevance to planning- The only planning relevance is if the pharmacy or medical use is acceptable.
- Relevance to the development- The uses are relevant to overall development, not the occupants.

- Enforceable- A decision on future occupiers requires the decision of the applicant before submission to the Planning Authority.
- Precise- No indication as to the need to know the future occupiers.
- Reasonable- The applicant cannot be expected to know the details of future occupiers before embarking on the building project.

6.2. The third party appeal against the decision to grant permission is submitted by the occupiers of a Pharmacy within Ballina and the issues raised are summarised below:

Principle of the healthcare facility at this site

- The proposal should be located within the town centre and be a feature of the townscape.
- A recent national survey has indicated a decline of small town centres in Ireland.
- There is a lack of planning guidance for primary health care centres.
- Statutory guidance for town centres refers to retail primarily.
- The principle is accepted although considering the environmental considerations the merits of the proposed development are queried.

Inadequate Appropriate Assessment of the impact on the Lower River Shannon SAC.

- The proposal is dependent on a WwTP in Ballina that discharges to a stream that flows into the Lower River Shannon SAC.
- The County Development Plan states that the WwTP is currently operating at full capacity and cannot accommodate any further development.
- Irish Water Report in 2017 states the organic loading of Ballina WwTP was 5,494 p.e compared to a capacity of 4,500 p.e.
- ABP permission for a primary health care centre on this site in 2010 (PL03.236664) required confirmation of a waste water discharge authorization from the EPA to the planning authority before occupation of development/commencement of operations.

- An article in the Irish Times, May 2018, reported a significant fish kill in Ballycorrigan stream near its confluence with the Shannon.
- The submitted screening assessment only looked at the County Clare side of the River Shannon, only half the catchment of the WwTP, most of the development pressure is on the Tipperary side of the River.
- The screening assessment does not give full attention to the WwTP.
- The NIS for the Ballina- Killaloe WwTP discharge scheme stated that there will be no impact on the integrity of the Lower River Shannon SAC, subject to the implementation of mitigation measures in full.
- Tipperary County Council recently refused the completion of a housing development (Reg Ref 17/601357) currently on appeal as the mitigation measures required to prevent a significant negative impact on the Lower River Shannon SAC are not within the control of the applicant or Planning Authority.

Suitability of the site for ancillary health care services in particular retail pharmacy.

- Health premises contribute to the social and commercial life of the town centre and should be located within (referenced in ABP 302063-18).
- That part of the proposal not supported by the HSE includes opticians, dental practices and health food shops which should be located in the town centres.
- The argument that the pharmacy should not be located on the site is not purely commercial or completion and there is a viable planning consideration that it will affect the “vitality and viability” of the town centre.

6.3. Applicant Response

The applicant has responded to the third party submission and the issues raised are summarised below:

- The site already has the benefit of planning permission for a larger primary care centre, granted by An Bord Pleanala when the zoning was residential.
- The current appellants were also the appellants to the previous application and the Board did not uphold their objection.

- The zoning is now “Mixed Use” where Pharmacy, Community Facilities, Doctor/ Dentist and Healthcare/ Clinic.
- The applicant has a contract to purchase the site and a service agreement with the HSE to deliver a primary health care centre.
- Two previous refusals by the Board for out of centre Primary care centres (302063) refused on open space zoning and (301500) based on the sequential approach.
- The Inspector for the decision on the previous permission (PL03.236664) acknowledged the restrictions within the town centre including topography and heritage.
- There are no new arguments being put forward against the proposed site remaining a suitable site, close to the town centre.
- The additional healthcare units are not retail units.
- The precise end users have not been identified but will be linked to Part 4 of Schedule 2 of The Planning and Development Regulations; Class 8 (medical and health services).

6.4. **Planning Authority Response**

None received.

6.5. **Observations**

None received

7.0 **Assessment**

- 7.1. The first party has appealed Condition No. 2 only. Having regard to the facts that a third party appeal has been made in relation to the location of the proposed development, servicing of the site by the WwTP and the impact on the proposal on the Lower Shannon River SAC, I consider the proposed development should be assessed ‘*de novo*’ by An Bord Pleanála. Accordingly, I do not recommend the

Board assess the proposed development under Section 139 of the Planning and Development Act 2000 (as amended).

7.2. The issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Condition No. 2
- Archaeology
- Access and Traffic
- Wastewater
- Appropriate Assessment

Principle of Development.

7.3. The site is located on the outskirts of small town of Killaloe. The site is zoned for “mixed use” in the development plan where it is an objective to support both primary and secondary uses e.g. commercial/ retail development as the primary use with residential development as a secondary use. The proposed development is for a Primary Health Care Centre (PCC) and associated Pharmacy. Appendix 2, Indicative Land Use Zoning Matrix, of the development plan lists both PCC and Pharmacy as uses permitted on the site.

7.4. PL03.236664 (Reg Ref 09/1051) was granted for a similar development on the existing site and lands to the north for a 2,775m² health care centre and 12. No residential units for “sheltered accommodation”. The previous permission did not include a Pharmacy.

7.5. The grounds of appeal is submitted by the owners of a medical related premises within Ballina, the town adjoining Killaloe, who consider the proposed development would have a significant negative impact on the vitality and viability of the town centre. The applicant considers the proposal is primarily medical related and as such will not negatively impact on the functioning of the town centre which is retail.

7.6. Killaloe is a small town where the main retailing functions are centred on the Main Street and John Street. The subject site is c. 500m to the west of the closest retail area, separated by residential developments. Upon site inspection it was noted there was a health shop and a dispensing pharmacy within the town of Killaloe. The Retail

Planning Guidelines for Planning Authorities require the promotion of the town centre through a sequential approach to development where there is a presumption for large-out-of town shopping centres. I note the floor space of the proposal and the limited availability of lands within the existing town centre to accommodate a similar development, and I consider the modest size of the retail/ pharmacy function (93m²) would not be detrimental to the vitality and viability of the town centre. In addition, the inclusion of a condition, as discussed below, limiting the use to medial and related services would further ensure the proposal serves the community.

- 7.7. However, this acceptability in principle is subject to other planning considerations being met which I will address below.

Condition No. 2

- 7.8. The proposed development has two buildings (1,670m²) where the two storey building along the north of the site has specific detailed uses within each of the rooms for the provision of a HSE service and General Practice. The single storey building, connected to the main building by a small corridor, includes three large units each 93m² listed as Additional Healthcare Accom.1, Additional Healthcare Accom. 2 and Pharmacy.

- 7.9. An appeal has been received by the applicant in relation to Condition No. 2 which states:

Full details of each occupier of the pharmacy and additional healthcare accommodation units shall be submitted to and agreed in writing with the Planning Authority prior to occupation of each unit. No change of use shall take place other than with consent of the Planning Authority whether or not such change of use would but for the terms of this condition constitute exempted development.

Reason: In the interests of development control and orderly development.

- 7.10. This condition was also included in the previous permission for a similar proposed development Reg Ref 09/1051 as Condition No 4. The Board granted permission for this development PL03.236664 although the condition was altered and Condition No 6 stated:

Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provisions amending or replacing

them, the use of the proposed development shall be restricted to the purposes as stated in the application, as specified in the lodged documentation, unless otherwise authorised by a grant of planning permission.

7.11. In response to the third party appeal, the applicant states that the use on the site will be restricted to the uses within Part 4 of Schedule 2 of The Planning and Development Regulations; Class 8 (medical and health services) which I note includes:

(a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),

(b) as a crèche,

(c) as a day nursery,

(d) as a day centre.

7.12. Section 39(2) of the Planning Act, enables a condition to be attached, specifying that the use of a structure as a dwelling shall be restricted to use by persons of a particular class or description. The applicant argues that Condition No 2 is unreasonable and unenforceable and therefore not within the parameters as set out in The Development Management Guidelines for Planning Authorities. Section 7.3 of these guidelines include basic criteria for the competent authority when deciding to impose a condition.

7.13. Having regard to the proposed use as a primary health care, I consider a condition restricting the use of those units listed in the plans as Additional Healthcare, within the parameters of Class 8 (a) sufficient to ensure an appropriate control of development which would not harm the vitality and vitality of the town centre.

7.14. The pharmacy is not classified as a use within Class 8 and should be assessed as Class 1, Use as a shop, therefore the use of exempted development would allow an alternative retail product to occupy this space. In this regard, I consider a condition to link the pharmacy to the overall development is appropriate to prevent any negative impact on the town centre product although I do not consider the submission of details of the occupants to the planning authority a reasonable request and a condition similar to that imposed by the Board under PL03.236664, detailed above,

sufficient to address any concerns the Planning Authority may have in relation to appropriate development on the site and the prevention of any negative impact on the town centre.

- 7.15. Therefore, having regard to the submitted details on the plans and particulars, should the Board be of a mind to grant permission, I consider Condition No. 2 should be amended as follows:

Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provisions amending or replacing them, the use of the proposed development shall be restricted to the purposes as stated in the application, as specified in the lodged documentation, unless otherwise authorised by a grant of planning permission.

Reason: In the interest of the protection and orderly development of the town.

Archaeology

- 7.16. The core area of Killaloe is identified as a recorded monument RMP CL045-033. A submission was received from the Department of Culture, Heritage and the Gaeltacht stating that possible subsurface remains on the site and recommended that archaeological monitoring be undertaken during any construction. Having regard to the location of the site and the ground works proposed, I consider this condition reasonable.

Access and Traffic

- 7.17. The proposal includes a new vehicular entrance from Convent Road and a pedestrian access to the north onto Hill Road. On foot of a further information request the site layout map was amended to include a dual-purpose footpath and cycle path between the site and Hill Road. The report of the Roads Department had no objection to the proposed development and stated that it would be desirable for the dual purpose footpath to link from the Hill Road to the front of Clare Care. I note this area is not within the control or ownership of the applicant and the final grant of permission did not include any condition requiring the applicant to undertake these works. Condition No. 17 of the previous grant of permission PL03.236664 required the payment of €30,000 for the provision of a footpath on Convent Hill, which I note currently exists. Having regard to the scale and design of the proposed development

I do not consider the proposal would have a significant negative impact on the traffic or pedestrian activity in the vicinity.

Waste Water

- 7.18. The issues of adequacy of the Ballina Wastewater Treatment Plant (WwTP) dates back to 2004 when 3 no planning permissions for residential development were refused pending the upgrade of the treatment plan (PL03.212367, PL03.212366 and PL03.212364).
- 7.19. The Inspectors Report on the previous permission (PL03.236664) referred to the information submitted in the accompanying documents relating to an application from the Local Authority for a Wastewater Discharge licence from the EPA. The information in the previous permission stated that the existing plant was approaching full capacity and was working at 85% where the capacity was 4,000 p.e with the loading estimated at 3.460p.e. Condition No 7 (b) stated:
- “Prior to first occupation of the development/ commencement of operations, confirmation in writing shall have been received from the planning authority that a waste water discharge authorisation for the Ballina Waste Water Treatment Plant has been issued by the EPA”.*
- 7.20. The WwTP has not been upgraded. The Annual Environmental Report (AER) 2017 for the Ballina WwTP¹ stated that the annual maximum hydraulic and organic loading was greater than the Treatment Plant Capacity (4,500p.e), the plant was in compliance with the ELV’s set out in the discharge licence and discharge generally did not have a negative impact on the water quality. Two incidents were reported to the EPA including a breach of ELV COD/SS and uncontrolled release from plant breakdown. Upgrade of the plant is proposed in the Capital Investment Programme for 2017-2021.
- 7.21. An Engineers Report submitted with the planning application states that the proposed foul drainage network will flow by gravity and discharge to the existing public foul sewer manhole on Shantraud Road at a rate of 6.8 l/s.
- 7.22. Irish Water issued a Further Information request informing the applicant the WwTP was limited and requested the submission of a pre-connection enquiry. The applicant

¹ http://www.epa.ie/licences/lic_eDMS/090151b2805fc9a3.pdf (19th of March 2019)

submitted a letter from Irish Water to state that the Capital Investment Plan project to increase capacity is at design stage and a storm tank element of the works is required to increase capacity. The final report from Irish Water had no objection to the proposal.

- 7.23. Policy 8.24 (c) of the County Development Plan 2017-2023 requires “... *that adequate water services will be available to service development prior to the granting of planning permission and to require developers to consult Irish Water regarding available capacity prior to applying for planning permission;*”. This policy is included within Section 8.4 Water and Wastewater Services and therefore I consider it appropriate that it is applicable to all water services, including wastewater.
- 7.24. It is of note two recent Board decisions (ABP 302566-18 and ABP 302796-18) which had similar issues in regard to the capacity of the WwTP. Similar responses were submitted from Irish Water yet the Board considered that aside from a proposal to upgrade the treatment plants through the Irish Water Capital Investment Programme, the proposals were considered premature.
- 7.25. Whilst it is acknowledged that the upgrade of the treatment plant is at design stage, the policies and objectives of the development plan must be considered in conjunction with the proper planning and sustainable expansion of the town, in particular Policy 8.24 detailed above, which requires adequate water services before the granting of any permission. Therefore, I consider the proposed development, by failure of capacity to treat the effluent, is premature and to grant permission would be a contravention of Policy 8.24 (c) of the Clare County Development Plan 2017-2023.

Appropriate Assessment

- 7.26. The site is located c. 700m to the west of the Lower River Shannon SAC (site code 002165)². The qualifying interests include water dependant habitats and species. Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the said habitats and species.
- 7.27. The proposal entails a connection to Killaloe/Ballina Waste Water Treatment Plant and relies on the upgrade of this treatment plants capacity in order to cater for the

² <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002165.pdf>

proposed development. The waters from the WwTP discharge to the Grange River a tributary which flows directly into the Lower River Shannon SAC.

- 7.28. A Screening for Appropriate Assessment accompanied the planning application and concluded that subject to the upgrade of the WwTP, the proposal would not have a significant negative impact on the Lower River Shannon SAC or any other European Designated site.
- 7.29. Appendix 7 of the Annual Environmental Report (AER) 2017 for the existing WwTP lists the ecological status of Grange River (upstream and downstream of Ballina WWTP) where the overall status for both upstream and downstream is less than good. The proposed development, in proposing to connect into the current system, would be likely to exacerbate the prevailing conditions. The submitted plans and particulars do not provide any assessment of the upgrade of the plant by either the applicant or by Irish Water and therefore I do not consider the upgrade of the WwTP can be used as a standard mitigation measure to prevent any significant negative impact on the adjoining SAC. Therefore, the potential indirect effects on water quality on which a number of the qualifying interests in the designated sites are reliant cannot be ruled out.
- 7.30. Therefore on the basis of the information provided I am not satisfied that the proposed development would not be likely to have a significant effect on Lower Shannon River SAC and should, therefore, be subject to an Appropriate Assessment.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. The proposed development includes a connection to Killaloe/Ballina Waste Water Treatment Plant and relies on the upgrade of this treatment plants capacity in order to cater for the proposed development as set in Irish Water Capital Investment programme. Policy 8.24 (c) of Clare County Development

Plan 2017-2023 states that “... *that adequate water services will be available to service development prior to the granting of planning permission and to require developers to consult Irish Water regarding available capacity prior to applying for planning permission*”. Therefore it is considered that the proposed development would be premature by reference to the existing deficiencies in the Killaloe/Ballina Waste Water Treatment Plant to which connection is proposed and the period within which this constraint may reasonably be expected to cease. The proposed development would, therefore, be contrary to the policy of the development plan and be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement and the current ecological status of the Grange River, a tributary of the Lower River Shannon SAC (site code 00265), the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Lower River Shannon SAC (site code 00265), or any other European site, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting outline permission.

Karen Hamilton
Planning Inspector

21st of March 2019