



An
Bord
Pleanála

Inspector's Report ABP-303331-18

Development	Demolition of out buildings and construction of 2 holiday homes (semi-detached).
Location	Kilkee Upper, Kilkee, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	17974
Applicant(s)	John English
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Dr. J.G. Nolan and Mrs. Colleen Harrington
Observer(s)	None
Date of Site Inspection	26/03/2019
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site is located on the southern side of Merton Square, a residential development in Kilkee Upper, the west coast village in Co. Clare. The site is the first site before the built-up nature of Merton Square. Currently on site is a derelict stone building and some hard standing with the remainder in open field.

2.0 Proposed Development

- 2.1. On the 18th December 2017, planning permission was sought for the demolition of derelict outbuildings (25sq.m.) and the construction of 2 no. four-bedroom semi-detached holiday homes of 164.5sq.m. each, domestic garage (33.5sq.m.), boundary fencing and connection to the public sewer. Five car parking spaces are proposed on site. The site has a stated area of 0.072ha

3.0 Planning Authority Decision

3.1. Decision

On the 7th of January 2019 the Planning Authority issued a notification of their intention to GRANT permission subject to 11 no. conditions. Condition no. 2 refers to permanent residency only.

3.2. Planning Authority Reports

- 3.2.1. **Water Services Department:** Further information required as the proposed watermain to which the applicant seeks to connect is in the ownership of the Merton Close Management Company.
- 3.2.2. **Planning Report:** Site ownership disputed, further information required. Proposed dwellings are excessive in height – should be reduced to two-storey to reduce overlooking. Separation distance of 22m required. Shower accommodation at ground floor required.

3.3. Further Information Request

- 3.3.1. The applicant was asked to provide the following information:

- 1 documentary evidence of sufficient interest to develop the site
 - a. written consent of the owner of the roadway along the north-western side of the site to the roadway being used for access

- 2 Written consent from Merton Close Management for connection to mains water supply
 - a. Pre-connection enquiry feasibility report from Irish Water
- 3 Revised proposals for dwellings in keeping with the adjoining ACA
 - a. Measures to avoid overlooking of dwellings on Merton Close,
 - b. Measures to provide a minimum 11m separation from the rear boundary
 - c. Compliance with section A1.3.2 of the development plan re. the provision of ground floor sanitary facilities,
- 4 Compliance with Part V
- 5 Agreement that use of the proposed dwellings be permanent occupancy only.

3.3.2. The applicant requested and was granted an extension of time until 8th October 2018.

3.4. Further Information Response

3.4.1. The applicant responded to the request for further information on the 8th October 2018. The response was as follows:

- 1 solicitors letter confirming consent for the application. confirmation that the roadway is in the charge of Clare County Council. No works are required inside the folio noted.
- 2 Solicitors letter confirming that the Merton Close Management Company was not established. The connection to potable water is outside the noted folio. The site is serviceable and is zoned for development. Irish Water have accepted the application
- 3 The proposed buildings have been revised in sympathy with the adjoining ACA. Velux windows have been omitted. Site plan shows 11m gardens. Ground level shower and toilet provided.
- 4 Part V exemption certificate submitted.

- 5 The development will be used as the applicants second home. The applicants request that no condition restricting short-term use be attached. Vacancy rates in Kilkee are less than that quoted in the development plan which refers to the 2011 census.

3.4.2. The applicants re-advertised the further information response as being Significant.

3.5. Reports on file following submission of Further Information

3.5.1. **West Clare Municipal District:** Condition required that footpath extend the full width of the site

3.5.2. **Irish Water:** Response to FI request is not adequate to proceed. Applicant to seek written permission from the third-party owners / operators of Merton Close Housing Estate to which the applicant intends to connect services to.

3.5.3. **Planning Report:** Application site is not all registered to same owner, however no evidence that ownership is in third party therefore application can proceed. Applicant has demonstrated that connections can be made to the existing and available water infrastructure. Applicant did not provide an Irish Water Feasibility Report as requested. Revised design of the proposed dwellings will result in no overlooking. Omission of garage welcomed. Condition restricting short-term letting should be added. Recommendation to grant permission.

3.6. Third Party Observations

3.6.1. Four observations on the application were submitted to the Planning Authority. The issues raised related to: incorrect red line boundary, the natural stone boundary wall, footpath, overlooking, access to the site, access to water supply, and loss of sunlight

4.0 Planning History

4.1.1. **PL03.223060:** Planning permission was refused for the constriction of 116 no. houses and outline permission was refused for the construction of 80 no. houses on a larger site of which the subject site formed the north-eastern corner, for the following reason:

- 1 Development of the kind proposed on the land would be premature by reference to the deficiency in the road network serving the area of the proposed development, having regard, in particular, to considerations of

restricted width and inadequate capacity of the road network to cater for the increased road traffic likely to result from the proposed development and the period within which this constraint may reasonably be expected to cease through the construction of the planned Kilkee Relief Road.

2. The proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise having regard to the width and inadequate capacity of the existing Dunlickey Road to cater for the increase in vehicular traffic generated, and the absence of traffic management plans incorporating junction sightline improvements and/or traffic calming interventions on the access route to/from proposed house numbers 1-46 in the proposed development.
3. The proposed development would seriously injure the amenities and depreciate the value of property in the vicinity by reasons of the height, orientation and proximity of proposed unit numbers 11-14 and 17-26 in relation to existing residential properties and having regard to the topography of the site. Furthermore, the proposed development would provide poor standards of amenity for incoming residents arising from proximity of proposed units numbers 128-131 to a proposed major traffic route and the inadequate provision of open space and pedestrian linkage in the area between Block 1 and Block 6 in the proposed development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
4. Part of the proposed access road to the main part of the proposed development is located outside the site which is the subject of the planning application and outside any lands indicated to be in the ownership or control of the applicants. The Board is not satisfied that the applicants have:
 - (a) sufficient legal estate or interest in the land the subject of the application to enable the persons to carry out the proposed works on the land, or
 - (b) the approval of the person who has such sufficient legal estate or interest.In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

- 4.1.2. Planning Authority reg. ref. **05/1451**: permission granted subject to conditions for alterations to site layout and site location in respect of 99/2247 (see below): the amendments effectively moved the proposed development slightly further north-east within the north-eastern part of the current appeal site.
- 4.1.3. Planning Authority reg. ref. **99/2247**: permission granted in 2003, subject to conditions, for 2 no. semi-detached houses with sewerage and water facilities at Kilkee Upper, on the subject site

5.0 Policy and Context

5.1. Clare County Development Plan 2017-2023

- 5.1.1. Kilkee is classed as a small town in the settlement hierarchy of County Clare. By 2023 the development plan seeks to have a population of 1,615 (an increase of 439 persons in 160 no. new households).
- 5.1.2. **Section 4.3.12** of the plan notes that while holiday homes form an important tourism infrastructure, large numbers in an area can have negative impacts. **Policy CDP14** referring to holiday homes notes that there is an identified oversupply of holiday homes and that new residential developments will be for permanent occupancy only.
- 5.1.3. **West Clare Municipal District**
Kilkee is defined as a small town in the West Clare Municipal District which states that a significant issue is the vacancy level of 71%. Whilst unoccupied housing is to be expected in a tourist town, this level of vacancy needs to be addressed. During the lifetime of this Plan the focus shall be on the provision of housing for permanent occupancy on lands that are zoned for residential uses in the town of Kilkee.
- 5.1.4. The subject site is located on lands zoned as 'existing residential' where it is an objective to: conserve and enhance the quality and character of the areas, protect residential amenities, allow for small scale infill development to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area, allow uses which enhance existing residential communities.
- 5.1.5. The lands adjoining the subject site are shown on the Kilkee settlement map as having a site-specific objective LDR6. The Board will note that LDR 6 refers to Ballard Road in Miltown Malbay.

5.2. **Natural Heritage Designations**

5.2.1. The subject site is located 0.2km west of the Kilkee Reefs SAC.

5.3. **EIA Screening**

5.3.1. Having regard to nature of the development comprising the retention of a small scale domestic development in a rural area, it is considered that 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**

6.1.1. A third-party appeal against the decision of the Planning Authority to grant permission has been submitted to the Board. The grounds of the appeal can be summarised as follows:

- The developers do not have permission to access lands, road and connect to services that traverse the Nolan's lands. Access to the services to which the proposed development intends to connect is under a roadway in the ownership of the Appellant Dr. Nolan. Consent will not be forthcoming. The proposed dwellings open on to the private roadway owned by Dr. Nolan. This was made known to the Planning Authority.
- The proposed development of a holiday home is contrary to the development plan policy. The applicant lives in Limerick. It is submitted that the development will not be a place of permanent residence.
- The proposed development will directly overlook the rear garden of the dwelling at 1 Merton Close (home of appellant Mrs. Colleen Harrington). This will affect her family's ability to use it as previously enjoyed.
- The appeal is accompanied by a letter from Dr. Nolan, folio schedule and maps confirming ownership of the property including the roadway.
- As the subject site slopes down towards the appellants lands, there is a risk of run-off which will damage the appellant's land.

6.2. Applicant Response

- The Planning Authority's report has accepted the land ownership and service access concerns.
- Proposed underground service connections are to be outside the folio referred to by the appellant.
- Access to the application site is available to the north-eastern side. Drawing submitted.
- Irish Water are currently processing the application to connect and have not raised an issue regarding the laying of services under the proposed path. The path is definitively in the ownership of the applicant and is not impinging on the appellants lands.
- The use of the houses has been conditioned in the grant of permission.
- The revised dwellings addressed the possibility of overlooking.
- The appellants concerns have already been addressed.
- The Board is requested to grant permission.

6.3. Planning Authority Response

- The appellants submissions were fully considered by the Planning Authority.
- The Planning Authority had regard to the Development Management Guidelines regarding land ownership and access to the roadway.
- Condition no. 2 of the Planning Authority's decision restricts the use of the dwellings to permanent residency only. This is a correct application of Objective CDP 4-13. A similar condition was attached by the Board under ABP-300199-18.
- The Planning Authority is satisfied that the proposed development will not cause overlooking.
- The Board is requested to grant permission.
- Clare County Council does not have any additional comments to make regarding the Applicants submission.

6.4. **Appellants Response to the First Party submission**

- It is not accepted that the proposed development can be constructed without trespassing onto the appellants lands.
- The developers do not have the authority to access these lands or connect to the public services.
- Solicitors letter submitted confirming Appellants ownership of Folio CE355568F.
- Correspondence between Clare County Council, Irish Water and the developers of Merton Close submitted, showing that roadway is private property.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Ability to develop the lands
- Impact on Residential Amenity

7.2. **Principle of Development**

- 7.2.1. The subject site is zoned for low-density residential use. The principle of development of residential properties on the site is acceptable.
- 7.2.2. Permission was sought for the sale of one of the two homes as a holiday let and the use of the second as a holiday let by the Applicant. The Planning Authority, in their decision to grant permission attached a condition requiring permanent occupancy, which they state is in compliance with Objective CDP 4-13.
- 7.2.3. The applicant submits that the census data on which Objective CDP 4-13 is based, is out of date and that the vacancy rate in Kilkee is now less than the 2011 census. While the vacancy rate for dwellings may have changed – and no definitive evidence to support this claim has been submitted, it remains the fact that the policy of the development plan remains no more holiday homes in Kilkee. At any point during the

lifetime of the current development plan, the Planning Authority could have amended that policy. They have not however, and the policy remains in place.

- 7.2.4. The applicant's submission that one of the dwellings is for use as his second home, does not address the policy. Knowing the user of the proposed dwelling does not change the fact that the dwelling will be used on a short-term basis and left vacant for periods of the year – exactly what the policy of the development plan is trying to avoid.
- 7.2.5. I note that the Planning Authority have condition permanent residency only on the proposed two dwellings. I do not agree that this is sufficient compliance with the development plan policy when the applicant has clearly indicated the dwellings are to be used as holiday homes.
- 7.2.6. I am satisfied that the proposed dwellings are not in compliance with Objective CDP 4-13 of the development plan.

7.3. **Ability to develop the land**

- 7.3.1. The ownership of the roadway upon which the subject site relies is raised as an area of concern. The appellant has submitted documentary evidence that he is the registered owner of the roadway and that he will not give consent for its use to access the subject site. The Planning Authority state that the subject roadway has been taken in charge and is a public road. The applicant has submitted evidence of the consent of the owners of the subject site to make the application. They state that notwithstanding the roadway ownership issue, access to the site can be achieved to the north-east – outside lands owned by the appellant. I note that this would require a redesign of the proposed development layout, however.
- 7.3.2. The ownership of the roadway is a civil matter, one which is not within the remit of the Board to adjudicate upon. It is a matter for resolution between the parties.
- 7.3.3. The second issue regarding ability to develop is that of access to services. Noting that access to the services in Merton Close were across third-party lands, the applicant revised the connection points to a point further east and within public lands. The Planning Authority have accepted this proposal. I note that Irish Water stated that the response to the FI request was not adequate to proceed.

7.3.4. As with the above disagreement on ownership of the road, connection to one service point versus another is not a matter for the Board to assess – only that a connection is available.

7.4. Impact on Residential Amenity

7.4.1. The proposed dwellings are approx. 11m from the boundary of no. 1 Merton Close (one of the appellants). Such a separation distance is common in built up areas. I am satisfied that the impact on the residential amenity of no. 1 Merton Close is not significant.

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and scale of the proposed development in a coastal village area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1.1. It is recommended that permission be REFUSED for the following reason:

- 1 The proposed development of two holiday homes – one to be retained by the developer and one to be sold – is contrary to Policy CDP14 of the Clare County Development Plan 2017-2023 which seeks to restrict the development of new holiday homes where there is an identified oversupply of holiday homes, as is the case in Kilkee, and that new residential developments will be for permanent occupancy only. Having regard to this policy, which is considered reasonable, it is considered that the proposed development, which is clearly intended for holiday home / short-term letting, would contravene materially the development plan objective on holiday homes and would be contrary to the proper planning and sustainable development of the area.

Gillian Kane
Senior Planning Inspector

10 April 2019