



An
Bord
Pleanála

Inspector's Report ABP-305401-19

Development	To retain the change of use of part of the existing dwelling house and garage to an art studio and all ancillary site works.
Location	Upper Park Road, Ballycasheen, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/664
Applicant(s)	Daniel & Tracey Sexton
Type of Application	Retention permission
Planning Authority Decision	Refusal
Type of Appeal	First Party -v- Decision
Appellant(s)	Daniel & Tracey Sexton
Observer(s)	Martin & Marie O'Riordan Vincent O'Malley Pat & Peter O'Leary & Others
Date of Site Inspection	6 th December 2019

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the eastern suburbs of Killarney, 1.8 km from the town centre and to the north and east of the N22 Cork Road. This site lies in a predominantly residential area. It is accessed to the front (west) and rear (east) off private cul-de-sacs, which each run on a north/south axis. These cul-de-sacs are in turn accessed off the Upper Park Road and a roundabout on this Road that accesses Ballyspillane Housing Estate and Ballycasheen Gardens. (Upper Park Road is a continuation to the east of Park Road (R876) and both Roads connect with the Park Road Roundabout on the N22 Cork Road/Killarney By-pass.
- 1.2. The site lies between the two aforementioned cul-de-sacs just beyond their centre points. This site is of regular shape and it extends over an area of 0.065 hectares. The site accommodates a modern detached dwelling house (270 sqm), which is orientated on a west/east axis, i.e. front/rear. This dwelling house comprises different elements, i.e. to the front, a single storey element with dormer windows above serving an upper floor and a projecting two storey element under, initially, a flat roof, and to the rear a single storey element at an intermediate level in relation to the front elements that adjoins the roof space of these elements by means of an upper floor. It is this single storey element (58 sqm) that is the subject of the proposed retention.
- 1.3. The said single storey element is accessed via a rear drive-in off the eastern cul-de-sac. It can also be accessed off the western cul-de-sac via the front drive-in and an external passageway along the northern side elevation to the dwelling house.

2.0 Proposed Development

- 2.1. The proposal is to retain the change of use of the aforementioned single storey element, which was formerly a garage, to an art studio and all ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

Retention permission was refused for the following reasons:

1. *The proposed retention of the change of use of part of the existing dwelling house and garage, located on a restricted site within an established residential area, to an art studio would constitute over development of the site which would seriously injure the residential amenities of adjoining properties. It is considered that the proposed retention of the art studio located immediately adjacent to existing residential properties would by virtue of the nature of the business proposed, detract greatly from the residential amenities of the adjoining properties.*
2. *Vehicular access to the art studio is considered to be sub-standard and inadequate to cater in safety for the additional traffic movements generated by the development. The proposed development would therefore endanger public safety by reason of a traffic hazard.*

Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Unsolicited further information received from the applicant.

3.2.2. Other Technical Reports

- Building Control: No objection, advises that Fire Safety and Disability Access Certificates required.
- Area Engineer: The access does not comply with design standards.

4.0 Planning History

- 15/336: Demolish conservatory and front balcony and to replace with new extensions to ground and first floors and to carry out elevational changes to existing dwelling house: Permitted.

5.0 Policy and Context

5.1. Development Plan

Under the Killarney Town Development Plan (TDP), the site is shown as lying within an area that is zoned “existing residential”, wherein the objective is “To provide and improve residential amenities.” Under this zoning, permitted uses include the following: community facilities, playgroup or creche, schools/education facilities, and home-based economic activity, and uses deemed to be “open to consideration” include use by an owner or occupier of part of a residence as a studio or as a playgroup or creche, and car parks.

5.2. Natural Heritage Designations

- Killarney National Park, Macgillycuddy’s Reeks and Caragh River Catchment SAC (000365)
- Killarney National Park SPA (004038)

5.3. EIA Screening

The proposal would entail the retention of a change of use only to part of the dwelling house on the subject site and so for the purposes of EIA it would not constitute a project. Accordingly, the question as to whether or not this proposal should be the subject of a mandatory or a sub-threshold EIA does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant, Tracy Sexton, begins by providing some background information. She states that her father operated an engineering business from the subject garage up until 2017, when the art studio commenced in this space. Given this history, the site should, notwithstanding the residential zoning in the TDP, be zoned commercial.

The use

- The art house is a venue for art courses for all ages and for those with learning difficulties and special needs. While disabled access is facilitated, subject to planning permission, alterations that may be needed in this respect under the Building Regulations would be undertaken.
- When school groups are in attendance, they are dropped by bus nearby from where they walk down the laneway to the art studio.

Access

- Between March 2017 and March 2019, access to the art studio has been via both the eastern and western laneways. Due to construction works, access has more recently been restricted to the western one. Neighbours have now voiced concern.
- By way of response, the applicant has sought to manage traffic movements by directing patrons to the grounds of their own property and to those of her parents', who reside opposite. She has also introduced staggered drop-off and collection times for parents/guardians.

Car movement and nuisance

- The observers have exaggerated the number of car movements on the western laneway. The instances of siblings attending together and car-pooling between families is such that such movements are deflated. The applicant has submitted figures in this respect that indicate car usage over a 6-week period as ranging between 5 and 9. Other events sampled over a wider period indicate car usage as ranging between 2 and 7.
- Attention is drawn to the maximum of 14 students that can be accommodated at any one time. During the school year, there are no classes on Fridays or Sundays and, during the summer holidays, art camps are held during the working-week only.
- Evening art and wine and art party events are now being held in a local hotel.

Traffic measures

- The applicant estimates that the period during which dropping-off and collection occurs runs to 10 minutes and so disruption is limited thereby.
- With the completion of construction works, the eastern laneway is available again.
- Where parking is needed, the spaces in front of the applicant's parents dwelling house can be utilised.
- The applicant has offered to construct speed bumps to discourage speeding on the western laneway.
- Warning signage has been erected, again, to encourage drivers to slow down.
- The applicant invites a RSA of the laneways.

Other business activity

- Attention is drawn to the observers, Peter and Pat O'Leary's, specialist wood product business, which operates from modern industrial premises at the top of the western laneway. Loading and unloading exercises generated by this business can block this laneway and discommode other road users. Likewise, emissions from it affect local air quality.

(The TDP zones the site of this business "built up area" rather than residential. The applicant considers that the subject site should, likewise, be zoned commercial).

- Attention is also drawn to Orla O'Leary's grinds business, which operates from her residential property on the western laneway. As with the art house, this use entails children being dropped-off and collected.

The applicants' appeal is accompanied by letters of support from neighbours and patrons of the art house.

6.2. Planning Authority Response

- The Planning Authority considers that the subject site is "fundamentally" unsuited for the art house use, due to the nature of the laneways, as private cul-de-sacs, and the additional traffic that is generated along them. Likewise,

the proximity of neighbouring residential property is such that amenities are adversely affected.

6.3. Observations

Martin & Marie O’Riordan of Upper Park Road

- Any suggestion of exaggeration can be countered by photographic/video evidence.
- A court injunction exists preventing patrons of the art house from using the western laneway.
- Any proposed traffic measures to the western laneway would not change its essential dimensions and thus failure to meet design standards.
- As the entrance to the art house is off the eastern laneway, accessing it from the western one is illogical.
- The zoning of the site is residential and so a commercial use should be disallowed.
- With increased traffic to the laneway has come a loss of privacy and security.
- Car parking spaces denoted as nos. 1 – 8, in the site opposite, have no planning permission, 9 and 10 are actually in the laneway, and only 11 – 13 are sited within the subject site.
- With respect to traffic generation from the O’Leary business, this does not bear comparison with that arising from the art house use.

Vincent O’Malley of “Woodford”, Upper Park Road

- Originally, the subject site was accessed only from the western laneway. Subsequently, one evolved from the eastern laneway in connection with a domestic garage. Any suggestion that this garage may have had a commercial use has been superseded by permitted application 15/336.
- The observer expressed concern about the use of the eastern laneway before March 2019. However, the use of the western laneway is presently the subject of a court injunction and so patrons of the art house now all use the eastern laneway. The applicants’ previous attempts at traffic management

have not been fully complied with and the case planner has note that it is not feasible to condition use of, in effect, either laneway.

- The observer recognises the applicants' expertise as artists. His only concern is to ensure free and unhindered access to his residential property.

Pat & Peter O'Leary & Others of Upper Park Road

- Attention is drawn to the Circuit Court injunction that prevents any use of the western laneway in connection with the art school/studio. This injunction was sought by 9 residents of this laneway and it was granted for the following reasons:
 - Patron vehicles obstructing access/egress to residential properties,
 - Traffic on narrow laneway poses health and safety risk to young children, including those with special needs,
 - Access for emergency vehicles impeded,
 - Traffic congestion as laneway facilitates only one way traffic movement at a time, and
 - Loss of privacy.
- Following complaint from a third party, the applicant is alleged to have instructed patrons to only access the art house via the western laneway, prompting the above cited legal case.
- The observers raise no objection to the art house *per se*: Indeed, the only issue of concern relates to the use of traffic generated by the use on the western laneway. The business venture represented by this use is "mobile", whereas the observers' homes are not.
- The observers respond to the applicant's critique of their joinery business as follows:
 - Their business has planning permission and that, in 46 years, it has not been the subject of any complaint of nuisance or inconvenience.
 - The profile of traffic movements associated with their business comprises 1 – 5 visitors daily, 1 staff daily, minor timber deliveries once a month, and

1 major timber delivery every 10 – 12 months, which takes 45 minutes to unload.

- If the applicants were concerned about the aforementioned traffic movements, why did they redirect patrons from the eastern to the western laneway?
- The recessed access to the observers' business means that it is sometimes used on an impromptu basis by drivers as a "lay-by". Such drivers are unconnected with this business, which has its own car park.
- The presence of unfamiliar pedestrians and vehicles in the locality has prompted the observers to install CCTV cameras out of concern for the security of their premises.
- The observers have submitted photographic evidence of traffic on the western laneway, which illustrates their concerns. They insist that this evidence is representative, and they question the applicants estimates of traffic on the basis that they have made available 13 car parking spaces.
- The validity of the submitted application is contested on the following grounds:
 - Only 3 car parking spaces are within the site and the 8 opposite are the subject of an enforcement enquiry (ref. no. 7916),
 - Allegedly another space within the dwelling house is being used as an art gallery and yet this space is not the subject of the current application,
 - References to the applicant's father's business need to be "read" in the light that access to the subject garage was exclusively off the eastern laneway,
 - Parking on the laneway should be subject to the consent of local residents, and
 - Access from the western laneway fails to facilitate those with mobility impairments.

6.4. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the TDP, relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use,
- (ii) Traffic, access, and parking,
- (iii) Amenity,
- (iv) Water, and
- (v) Stage 1 Screening for AA.

(i) Land use

- 7.2. Under the TDP, the site is shown as being zoned R2, existing residential. Surrounding sites are likewise zoned R2, except for the joinery business and associated dwelling house to the north, which is zoned M4, mixed use in a built-up area. The commentaries accompanying R2 and M4 provide guidance on the appropriateness or otherwise of various land uses.
- 7.3. The proposal is to retain the change of use of a former garage to an art studio. The previous use of this garage is set out by the applicant, Tracey Sexton, in a commentary that accompanies the cover letter to the application. She states that it was previously used in conjunction with her father's engineering business.
- 7.4. The dwelling house on the subject site was the subject of 15/336. Under this application the garage was depicted as such and so there was no indication that its existing or proposed usage was other than domestic. I am not aware of any previous application under which the use of this garage was addressed and so I consider that its authorised use can only be considered to that of a domestic garage.
- 7.5. The art studio is known as the Art House. In the aforementioned commentary this studio is described as "a stimulating and supportive environment in which members of the local and wider community can engage with the arts and education". An accompanying timetable indicates that, during term time, a kids art class is held on 3 afternoons a week and two such classes are held on Saturday mornings, a teens art

class is held on one afternoon a week, and adult art classes on two evenings a week. Additionally, for 5 weeks in the summer art camps are held on week day mornings. The Art House can accommodate a maximum of 14 attendees at a time.

- 7.6. At the appeal stage, the applicants have indicated that evening art and wine and art party events, which were formerly held in the Art House, are now being held in a local hotel.
- 7.7. During my site visit, I observed an art class on a Friday afternoon. The art studio was fully in use as an active and dynamic space. Thus, the type of art studio is not that of a passive space within which art can be viewed so much as a space in which art is created by attendees.
- 7.8. I note that the observers raise no objection to the use in question *per se*. Indeed, considerable support is expressed for what the applicants are doing. The only issue that they have is with the traffic generated by this use and its implications for ease of access/egress to their properties and related questions of road safety.
- 7.9. In the light of the foregoing observations, the use in question falls to be assessed as to its appropriateness under the TDP's residential zoning. This zoning identifies permitted and open for consideration uses. The former include playgroup or creche and schools/educational facilities, while the latter include use by an owner or occupier of part of a residence as a studio or as a playgroup or creche. (I understand the distinction here as being between standalone facilities, on the one hand, and facilities that accompany a residential property, on the other hand). Accordingly, I consider that the use in question is one that should be regarded as "open for consideration". The TDP comments on such uses as follows: they "may be permitted where the Planning Authority is satisfied that the suggested form of development will be compatible with the policies and objectives for the zone and will not conflict with the permitted uses and also conforms with the proper planning and development of the area." Whether the use in question is appropriate is contingent on consideration of the other topics in my assessment.
- 7.10. Reference is made by the applicants to the joinery business to the north of the site. This business is on a site that is zoned mixed-use. As a light industrial use, it is deemed to be a permitted use under this zone. Uses "open for consideration" include residential and play school/creche.

7.11. The applicants suggest that their site should be rezoned “mixed use”. Clearly, such a suggestion is one that could be raised under any review of the TDP. I note, however, that the subject site does not adjoin that of the joinery premises, but rather is one house away from the same, and the commentary on usage for this zone does not necessarily indicate that the use in question would be any easier to permit under it. I, therefore, conclude that the use proposed for retention is one that is open for consideration under the TDP’s residential zoning of the subject site.

(ii) Traffic, access, and parking

7.12. Traffic generated by the use in question clearly exceeds that which occurred if the subject site were to remain simply in residential use.

7.13. Figures of traffic movements have been submitted by the applicants for a 6-week period during April/May 2019, which indicate car usage as being between 5 and 9. If it is assumed that such usage entailed parents/guardians dropping-off and collecting children, then between 10 and 18 round trips would have occurred or between 20 and 36 traffic movements.

7.14. Figures of traffic movements have been submitted by observers at the application stage, which assume that for each attendee a car is used. Thus, 14 cars are assumed per class/event, which would represent 28 round trips or 56 traffic movements.

7.15. The applicants have challenged the aforementioned assumption on the basis that some attendees are siblings and so travel together and some parents’ car pool. They also refer to instances of attendees walking to and from the Art House and school parties utilising buses that drop-off and collect children from the public road network, i.e. they walk along either the eastern or the western private cul-de-sacs to the Art House.

7.16. The applicants have submitted a site layout plan, which shows a total of 13 car parking spaces, i.e. 3 spaces in the front drive-in to their dwelling house and thus within the site, 8 perpendicular spaces in front of the dwelling house opposite the applicants’, i.e. Tracey Sexton’s parents’ dwelling house on the western side of the western cul-de-sac, and 2 parallel spaces to the south of the 8 along the remainder of the frontage in question.

7.17. During my site visit, I observed the above spaces “on the ground”. Their identification indicates that the applicants have either experienced or they anticipate the need for 13 spaces to be used simultaneously. Thus, the possibility of there being occasions when numbers of cars approaching those assumed by the observers is provided for.

7.18. The observers have critiqued the 8 spaces, on the basis that they are unauthorised and the subject of an enforcement enquiry, and they have critiqued the 2 spaces on the basis that consent for formal on-street parking spaces needs to be given by the residents of the western cul-de-sac. I note these critiques. I note, too, the corollary to them, which is that only 3 of the 13 spaces indicated can be considered as available for parking under the current proposal.

7.19. The observers draw attention to a court injunction that forbids use of the western cul-de-sac in connection with the Art House. I consider that, for the purposes of assessing the current proposal, the existence of this injunction should not serve to set aside the question as to whether the western cul-de-sac is a satisfactory means of access to the Art House. Likewise, this question should be asked of the eastern cul-de-sac, too.

- Access to the western cul-de-sac is off the southern side of Upper Park Road at a point where 4 access points are clustered together, i.e. from east to west, the access to the joinery yard, the access to the dwelling house associated with the joinery business, the access to the western cul-de-sac, and the access to a car sales yard.

The western cul-de-sac is of single lane width. It meanders slightly in its alignment and it is 140m long. This cul-de-sac terminates in a partial turning head and it is accompanied over its southern half by a footpath on its eastern side. It serves the car park to a joinery business and 6 dwelling houses.

- Access to the eastern cul-de-sac is off the southern side of the roundabout on Upper Park Road, which also serves the Ballyspillane Housing Estate and another residential cul-de-sac, Ballycasheen Gardens, which is also accessed off the southern side of the said roundabout in a position adjacent to the access to the eastern cul-de-sac.

The eastern cul-de-sac is of single lane width. It is of straight alignment and it is 127m long. This cul-de-sac is punctuated on its western side by two partial turning heads. It serves 4 dwelling houses and the Art House.

7.20. In the light of the above descriptions I would make the following comments:

- Both accesses lie in positions where their legibility is complicated by the proximity of other accesses. Thus, discerning the correct access poses a challenge. By contrast, as egresses, they both are accompanied by good sightlines along Upper Park Road.
- Both cul-de-sacs are of single lane form and neither have fully fledged turning heads. Thus, traffic can only move in one direction at a time and turning movements are complicated.
- The western cul-de-sac has a footpath along one side over the second half of its extent, while the eastern cul-de-sac has no footpaths at all. Thus, pedestrians, as vulnerable road users, must share the carriageway with any vehicles that may be passing.

7.21. In the light of the above comments and in the light, too, of the pattern of traffic movements generated by the art studio use wherein they cluster around the start and finishing times of classes/events, I consider that both cul-de-sacs are inherently unsuited to accommodating satisfactorily the number of traffic movements, which at least on some occasions, are generated by this use. Specifically, the concentration of movements at regular intervals is likely to cause congestion and hence obstruction and turning movements are likely to pose a hazard by way of the potential for collision. Vulnerable road users such as pedestrians and perhaps cyclists, too, are effectively not provided for as the aforementioned footpath only begins at the subject site.

7.22. The applicants have cited measures whereby the above traffic management and road safety concerns might be mitigated. They thus cite the promotion of staggered arrival and departure times and their willingness to undertake traffic calming measures along the cul-de-sacs. Observers have critiqued the efficacy of the former and I anticipate that the latter would, as with the formal parking spaces proposed for the western cul-de-sac, require the consent of other residents.

- 7.23. During my site visit, I observed that the notices have been posted along the front boundary wall to the subject site, which state the following: “Slow down children crossing” (with accompanying signs denoting children crossing and a 10 kmph speed limit), “Please turn car here: End of lane private”, and “Roadway to be kept clear at all times”. Clearly, these notices are intended to encourage drivers to use the available off-street car parking spaces and to turn within the drive-in to the front of the applicants’ dwelling house. As noted above, the 8 spaces opposite cannot be considered under this assessment and the availability/utility of the drive-in as a turning head would be contingent on disciplined parking within the same.
- 7.24. I conclude that the art studio use generates a significant number of traffic movements within the context of the predominantly residential western and eastern cul-de-sacs and that, due to the position of their access points off the public road network, single lane width, and the effective absence of turning heads and footpaths, these cul-de-sacs are inherently unsuited to accommodating such movements, especially as they tend to be concentrated in time. Only 3 of the 13 car parking spaces indicated on the submitted plans can be taken into account under this application and so there is a shortfall in existing authorised car parking spaces to serve the Art House.

(iii) Amenity

- 7.25. The Planning Authority’s first reason for refusal critiques the proposal on the ground of over development and, due to its nature and proximity to residential properties, the resulting great detraction in the amenities of these properties. Observers specifically refer to a loss of privacy and security, as a result of a higher incidence of unfamiliar traffic on the western and eastern cul-de-sacs.
- 7.26. I understand the above term “over development” to be a reference to the intensity of the use, in terms of the numbers of people attracted to the site. However, insofar as these numbers are capable of being accommodated satisfactorily within the art studio, I do not consider that the use *per se* is over intensive.
- 7.27. The observers concerns cited above stem from the traffic generated by the use, as distinct from the use itself. During my site visit, I observed that the two cul-de-sacs are predominantly residential in character and, as cul-de-sacs serving a total of 10 dwelling houses, they would ordinarily be lightly trafficked. The only exception to this

pattern is the joinery business located at the head of the western cul-de-sac.

However, given the location of this business, traffic generated by it does not proceed further down the cul-de-sac.

- 7.28. In the light of the foregoing discussion, I conclude that the dis-amenity arising from the proposal is attributable to the traffic generated by the use rather than the use itself.

(iv) Water

- 7.29. The applicants' residential property is served by the public water mains and the public foul and surface water sewerage system.

- 7.30. The subject art studio is served by a dedicated w.c., which is served by the existing connections between the residential property and the said public infrastructure.

- 7.31. Under the OPW's flood maps, the application site is not shown as being the subject of any identified flood risk.

- 7.32. I conclude that the proposal raises no water issues.

(v) Stage 1 Screening for AA

- 7.33. The application site does not lie in a Natura 2000 site and the proposal is for the retention of a change of use only to a domestic garage.

- 7.34. Having regard to the nature and scale of the proposal, no Appropriate Assessment issues arise, and it is not considered that the proposal has a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. That permission be refused.

9.0 Reasons and Considerations

Having regard to the significant number of traffic movements generated by the art studio and to the tendency for these movements to be concentrated in time, it is considered that the predominantly residential western and eastern cul-de-sacs that serve the subject site are, due to the position of their access points off the public road network in close proximity to other access points, single lane width, and the effective absence of turning heads and footpaths, inherently unsuited to accommodating such movements. In these circumstances, to accede to the retention of the art studio would perpetuate a situation wherein the legibility of access off the public road network is poor, traffic congestion arises on the said cul-de-sacs leading to obstruction for other road users, complicated turning movements of necessity occur which risk collision, and vulnerable road users are not provided for. Accordingly, the proposal is contrary to the principles of good traffic management and it jeopardises road safety and, as such, this proposal is contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

2nd January 2020