



An
Bord
Pleanála

Inspector's Report ABP 306100 - 19

Development	Change of use of public house to 4 residential units and ancillary works.
Location	14 Ballymullen, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/258
Applicant	Michael Healy Rae
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	(1) Michael Horgan (2) Bethan & Sean Finucane
Observer	Jim Collins
Date of Site Inspection	06/02/20
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Note: This constitutes the 2nd appeal on the site for change of use of the premises to residential units. File ref. ABP 301583 – 18 refers.

The site is as previously described:

The Nancy Myles public house is a two storey building located at the southern end of Tralee town. It has frontage onto the N86 along a section linking Dan Spring road and Killerisk Road. The original public house has previously been extended to the rear at ground floor level and the curtilage includes an open yard at the back of the building enclosed by a stone wall and opening. The gate previously erected at the opening has been removed. The 1st floor is currently in residential use and is accessed by an internal stairs. A small open space enclosed by a timber fence serving No. 15 Ballymullen immediately to the south can be accessed via the site. The site has a stated area of 0.0674 hectares.

There is a laneway with access onto the N86 adjoining the north-west elevation of the building which serves as access to the rear of residential and commercial properties at this location, including the appeal site. Properties in the immediate vicinity comprise mainly two-storey, terraced structures, in residential use. Murphy's Terrace is located to the north-west of the site. A former military barracks is located on the opposite side of the N86.

2.0 Proposed Development

The application was lodged with the planning authority on the 15/03/19 with further plans and details submitted 14/10/19 following a request for further information dated 08/05/19. Revised public notices were submitted 25/10/19.

As amended the proposal entails the change of use of the entire ground floor of the public house to four apartments. The development would include the provision of windows in the north-east elevation, the provision of doors and windows in the south-west and south-east elevations, and the removal of the rear boundary wall to provide 6 no. on-site car parking spaces. Private and communal open spaces are proposed. The store at the rear of the building is to be demolished.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 3 conditions:

Condition 2: Financial contributions

Condition 3: Drainage, lighting, road and footpath requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 08/05/19 notes the differences between the current and previous proposals. The use of the entire ground floor results in a significant increase in the floor area of the apartments. The main reason for the previous refusal by the Board has been addressed. Clarification as to whether the existing store is to be retained required. Concerns remain regarding the quality of the proposed open space. Clarification required regarding on-site parking. A request for further information recommended.

The 2nd Planner's report dated 08/11/19 following receipt of further information considers the proposed 8 no. parking spaces to be sufficient. Having regard to the layout of the site, the proposals for open space areas, the floor areas of the units which include internal storage areas and the proposal to provide communal external areas, it is considered that the amenities of the residents would be satisfactorily provided for. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Estates Unit in a memo dated 29/03/19 notes the development will not be taken in charge.

Area Technician in a report recommends a grant of permission subject to conditions addressing matters including car parking, on site lighting and works to the public road and footpaths.

Housing Estates Unit in an email dated 29/03/19 notes it will not be taken in charge. Visitor parking and adequacy of right of way queried.

3.3. **Prescribed Bodies**

Irish Water in a report dated 28/03/19 has no objection subject to conditions.

Transport Infrastructure Ireland in letters dated 04/04/19 and 21/10/19 has no observations.

3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to the matters set out in the 3rd party appeals and observation received summarised in sections 6.1 and 6.3 below.

4.0 **Planning History**

ABP 301583-18 (17/665) – permission refused for change of use of part of the public house to four apartments. The change of use applied to the single storey, ground floor extended area to the rear of the original building.

The reason for refusal stated that the Board was not satisfied that the architectural response and design was of a satisfactory standard to meet the needs of future occupants of the proposed and existing residential units with regard had to the restricted nature of the site, to the unresolved nature of the future use of the area to the front of the building, to the arrangement of external amenity space to serve the proposed and existing residential units and to the single aspect nature of residential unit number 1.

I note the following from the Council's Planner's report relating to previous applications to the planning authority:

P.A. Ref. 88/53 – retention of windows

P.A. Ref. 98/155 – extension to pub and new entrance porch

P.A. Ref. 99/215 – extension to rear

P.A. Ref. 02/149 – retention of signage and front alterations

5.0 Policy Context

5.1. Development Plan

Tralee Development Plan 2009-2015

The site is zoned 'Residential' the objective for which is to protect and improve residential areas and to provide for facilities and amenities incidental to those residential areas.

Development Management Provisions relating to apartment development include:

One Bedroom - Minimum floor size 45m², minimum storage size 3m².

Private open space may be in the form of rear gardens or landscaped courtyards, terraces/patios for ground floor units and balconies at the upper levels ... These spaces shall be sited to take advantage of sunshine and provide shelter and privacy.

Public open space should be designed to maximise light, amenity and to provide a range of spaces to accommodate all occupiers. The minimum public open space standard to apply to one bedroom apartments is 10m² per apartment.

The parking standard for development in the town's suburbs is 2 spaces per apartment unit.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Bethan and Sean Finucane

The grounds of the appeal can be summarised as follows:

- The building has been subject to flooding. The property lies on a flood plain.
- The proposal amounts to overdevelopment of a limited site.

- It is out of character with surrounding properties and would adversely affect their value.
- Parking provisions are inadequate taking into consideration the use at 1st and 2nd floor level. Some of the spaces delineated are impractical.
- The amenity areas are unsuitable.
- Invasive Japanese Knotwood is on the site.
- Vehicular access would be wholly inadequate and dangerous.
- The land between 11 Murphy's Terrace and the pub is not an established right of way. Despite this light vehicle use was tolerable. Increased use would be unacceptable due to its narrow width, likely congestion and poor access to and from the road and impacts on their end wall. The right of way to the rear of the 14/15 Ballymullen has been via the lane to the side of 16 Ballymullen
- Planning history for development to the rear of Murphy's Terrace detailed.

6.1.2. **Michael Horgan**

The grounds of appeal accompanied by photographs can be summarised as follows:

- The proposal would seriously injure the amenities of and devalue adjoining property and would set an undesirable precedent. It would be contrary to the current development plan.
- The building has been subject to flooding.
- There are concerns regarding the additional traffic on the adjoining public road which is heavily trafficked.
- The layout does not comply with the relevant guidelines.
- Open space and parking are inadequate.
- Reference made to refusals of permission by the Planning Authority and the Board for proposed developments in the vicinity.

6.2. Applicant Response

The response by Patrick Murphy BE on behalf of the applicant can be summarised as follows:

- The proposal complies with the provisions of the development plan.
- Parking provision was agreed with the local authority. The provision of 2 spaces per unit was deemed excessive. The new usage has less parking requirements than the public house.
- The design approach provides for adequate amenities of prospective residents.
- The rejuvenation of the proposal would enhance the area.
- The applicant is aware of the flooding issues in the area but confirms that the building has not flooded in the past.
- Car manoeuvres will not significantly increase due to the development and would be much larger if the building reopened as a public house.
- The first and second floors are residential. A section 5 referral to the Council confirmed same. The use of any parts of the building not included in this application will retain the historic or permitted use. The current design addresses amenity requirements for the residential usage of the entire building.
- The wall is owned by the applicant and is legally entitled to demolish it.
- There are no visible signs of Japanese Knotweed on the site. It is present on lands to the southwest.
- All property owners in the area avail of the lane for both pedestrian and vehicular access to the rear of their properties. The applicant is legally entitled to provide access and parking to the rear.

6.3. Planning Authority Response

The response can be summarised as follows:

- The proposal differs from that previously refused in that it seeks the conversion of the entire ground floor area to 4 no. 1 bedroom apartments.
- The proposal is consistent with the policies and objectives of the Tralee Town Development Plan.
- There is no evidence that the site is subject to flooding. This matter was previously assessed under the previous application.
- The proposal would not cause a traffic hazard. This matter was previously assessed.
- The proposed conversion is in keeping with the residential character of the area and would not devalue property.
- The proposal does not constitute overdevelopment of the site.
- The proposal complies with the Guidelines on Design Standards for New Apartments issued in 2018.
- The issue of right of way is a legal matter. The laneway is used to access the rear of the site by residents of the 1st floor unit and it has been used in the past to access the rear of the site.
- The suitability of the laneway was previously assessed and was deemed suitable to cater for the additional vehicular movements. The proposal would generate less traffic than the previous proposal.

6.4. **Observations**

An observation received from Jim Horgan considers the proposal to be substandard. Reference is made to the site being within an area susceptible to flooding, access to the units and anti-social behaviour.

7.0 **Assessment**

This constitutes the 2nd appeal for the conversion of the ground floor of No.14 Ballymullen from a licenced premises to residential accommodation. The Board previously refused permission in November 2018 under ref. ABP 301583-18 (17/665). The reason for refusal is summarised in section 4 above.

The existing public house is located on lands zoned for residential purposes in a suburban area within the town of Tralee. It is a fully serviced site that adjoins residential properties. In principle, the conversion of the building to residential units can be seen to be compatible with the zoning objective for this area.

I consider that the issues arising in the case can be assessed under the following headings:

- Design and Layout
- Amenities of Adjoining Property
- Traffic, Access and Parking
- Other Issues

7.1. Design and Layout

The Inspector in his inspection of the site during the assessment of the previous appeal noted that the existing building was undergoing works internally at ground floor level with the public house effectively cleared out and preparations made for new works. I note that a number of new openings have been made, notably 1 door in the south-west (rear) elevation and a door and window opening in the south-east (side) elevation. On my inspection the works had ceased with access secured.

The 1st and 2nd floors were historically used for residential purposes and remain in such use with a 4 bedroom unit delineated on the plans. The unit appears to be occupied and is accessed via an internal stairs. No. 15 Ballymullen immediately to the south is also in residential use with access available from the front and rear and is served by a small, fenced amenity area to the rear. Although outside the red line of the application rear access is currently available via the site.

The substantive difference between the previous and current proposal is that it is now proposed to convert the entire ground floor to 4 no. 1 bedroom apartments. It is also proposed to demolish the store to the rear. I consider that the concerns raised in the previous appeal in terms of the unresolved nature of the future use of the area to the front of the building, having an established use as a public bar, and the functioning of the residential units in conjunction with same, have been addressed. Taken with the existing residential unit at 1st and 2nd floor levels this would provide for a total of 5 residential units at No.14.

The residential units range in size from 50.73 sq.m. to 60.04 sq.m. and exceed the minimum standard of 45 sq.m. as set out in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities. The living and bedroom areas also meet the minimum requirements in terms of size and dimensions. Storage provisions exceed the 3 sq.m. requirement. The units are to be dual aspect and address the previous concerns in this regard.

I note that the Board in its Direction on the previous appeal stated that in considering the options for the proposed change of use of the existing building to residential use, some flexibility in terms of the application of parking standards and the approach to the allocation of open space might be appropriate and might enable a better site layout arrangement. Notwithstanding, the design solution continues to entail separate private amenity spaces albeit, to be accessed directly from the units in all but one instance (the space to serve unit no.1 is at a remove). All enclosed spaces exceed the 5 sq.m. minimum requirement set out in the guidelines. The existing 1st floor residential unit is to be served by a patio. An enlarged communal open space is also proposed. Details of the boundary treatments to the said spaces are not provided. Car parking is still proposed to line the back end of the yard save with a reduction in the number of spaces from 8 to 6. The yard will largely remain open to the adjoining lane due to the proposed removal of a rear boundary wall.

I submit that there are often inherent constraints in terms of providing for optimum private amenity space arrangements where a building is being converted to residential use relative to new build. This is acknowledged in the guidelines which recommends the practical and flexible application of the requirements of the guidelines in relation to existing building conversion projects, where property owners must work with existing building fabric and dimensions. It is recommended that planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with the building standards requirements.

On balance, therefore, and in the context of the recommendations of the guidelines as set out above I consider that the scheme as revised is acceptable and subject to a high standard in terms of finishes and delineation to both the private and communal open space areas, will provide for a reasonable level of amenities to prospective occupants.

7.2. Amenities of Adjoining Property

I concur with the Inspector in his assessment on the previous appeal in that having regard to the proposed residential use, its location in a residential suburb, the established structure and its layout relative to neighbouring dwellings, and the lack of overlooking, overshadowing, etc. arising from the proposed development, I do not consider that the conversion of the proposed ground floor section of the building to residential use would have a significant adverse impact on the amenities of neighbouring residents.

7.3. Access, Parking and Traffic

With regard to access onto the N86 and the suitability of the adjoining lane to accommodate traffic accessing the proposed parking area, I acknowledge that the existing road is a very busy stretch of public road. It is, however, within a 50kmph section of the road within the town and there is no impediment of sightlines when accessed from the lane.

Whilst it is contended that the lane between 11 Murphy's Terrace and the site is not an established right of way no documentary evidence to this effect is submitted in support. It is evident that the properties in the terrace have used the lane for such purposes for a significant period of time and continue to do so. The said lane is approx. 5.0 metres in width between flanking buildings. It can adequately accommodate the volume of traffic associated with the residential use on this site without constituting a significant traffic hazard.

6 no. spaces are proposed along the rear boundary accessed from the rear lane to serve the development. I also note that unrestricted parking spaces are available along the road frontage and in the vicinity of the site of which 2 no. spaces are delineated as serving the development. Taking into consideration the location of the site within the town of Tralee and the requirements of the previous licensed premises use on the site I consider that the proposed provision to be acceptable notwithstanding the shortfall of two spaces relative to the current parking standards set out in the Tralee Development Plan.

7.4. Other Issues

The appellants are adamant that the existing property was subject of flooding in the past. The agent for the applicant, whilst acknowledging the flooding issues in the

vicinity, reiterates that the property has not been subject to flooding. I have no information to conclude that the existing structure has previously been subject to flooding and do not consider that it is a matter that is of concern relating to the proposed change of use.

It is apparent that there is an issue with Japanese Knotweed in the vicinity of the site but there is no information to suggest that there is a Knotweed concern relating to the site itself. As stated by the Inspector in his assessment on the previous appeal appropriate precautions would be required to be taken at the construction phase which could be undertaken by the developer in the event of permission being granted.

Appropriate Assessment – Screening

Having regard to the nature and scale of the proposed development on a fully serviced site within the town of Tralee and the distance from the said 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.

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 existing residential zoning objective for the site as set out in the current Tralee Town Development Plan, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would provide an acceptable level of residential amenities for prospective occupants and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 14th day of October, 2019 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 following details shall be submitted to the planning authority for written agreement prior to commencement of development:
 - (a) Height and finishes of the boundary treatments to the proposed private amenity spaces and the proposed communal amenity space as delineated on the site layout plan Drawing No. P190107-010-A received by the planning authority on the 14th day of October, 2019.
 - (b) Surface treatment and demarcation of the proposed car parking spaces and differentiation from the communal yard area.
 - (c) Surface treatment of the communal yard area
 - (d) Rear boundary treatment adjoining the proposed communal amenity space and private amenity space serving Unit No.1 as delineated on the site layout plan Drawing No. P190107-010-A received by the planning authority on the 14th day of October, 2019

Reason: In the interests of visual and residential amenity.

3. Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.

Reason: In the interest of public health.

4. The disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

6. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

7. a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with

the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

March, 2020