



An  
Bord  
Pleanála

## Inspector's Report ABP-306138-19

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<b>Development</b>	To demolish existing dwelling house, and to construct new building to contain retail unit to ground floor and self-contained apartment to first and second floors.
<b>Location</b>	Well Lane South, Main Street, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	19/495
<b>Applicant(s)</b>	Dennis Coffey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 15 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Annamaria Gallivan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> March 2020
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located in Killarney town centre on the southern side of Well Lane South, a utilitarian laneway that runs between Main Street, to the east, and Beech Street, to the west. This site adjoins Main Street Shopping Mall (formerly Innisfallen Shopping Mall), to the south, which, likewise, runs between these two Streets. While open to the public, the shop units in this Mall are largely vacant at present.
- 1.2. The site itself is of rectangular footprint and it extends over an area of 0.006 hectares. This site accommodates a street-fronted, two storey cottage of traditional form and design with a shallow rear yard. This cottage is vacant and boarded up at present. The majority of its roof has been stripped of slates leaving the interior largely open to the elements. The cottage adjoins a multi-storey portion of the aforementioned Mall, to the east, and a two storey building, to the west. To the south of the rear yard, the site abuts a further two storey portion, the first floor of which is laid out as a circulation area.

## 2.0 Proposed Development

- 2.1. The proposal would entail the following elements:
  - The demolition of the existing cottage (68 sqm), and
  - The construction of a new three storey building (126 sqm), which would accommodate a retail unit (36 sqm) on the ground floor and a one-bed, self-contained apartment (70 sqm + 20 sqm of circulation areas) on the first and second floors.
- 2.2. Under further information and clarification of this information, the proposal was revised to show front balconies at first and second floor levels and an internal bin store beside the front door to the apartment.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following clarification of further information, permission was granted subject to 15 conditions, one of which forbids overnight commercial guest accommodation, unless planning permission for the same is obtained.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Further information requested with respect to the following:

- Details of proposed water supply and waste water disposal connections,
- Clarification as to whether or not the applicant owns the yard shown on the site layout plan, and
- Details of bin storage and the need for a balcony on the front of the proposed building.

Clarification of further information with respect to the following:

- Certified landholding map for the entire site, and
- Alternative bin storage for apartment, which does not entail accessing the yard via the retail unit.

#### 3.2.2. Other Technical Reports

- Irish Water: Following receipt of further information, no objection.
- Kerry County Council:
  - Fire Authority: No objection.

## 4.0 Planning History

None

## **5.0 Policy and Context**

### **5.1. Development Plan**

Under the Killarney Town Development Plan 2009 – 2015 (TDP), which has been extended, the site is shown as being zoned town centre. Under this zoning, retail and residential uses are permitted in principle.

### **5.2. Natural Heritage Designations**

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

### **5.3. EIA Screening**

Under Items 10(b)(i) & (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where more than 500 dwelling units would be constructed and where 10 hectare-urban sites would be developed, the need for a mandatory EIA arises. The proposal is for the development of a 0.006-hectare site to provide 1 new build dwelling unit. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

Annamaria Gallivan, who is a director of the Xdev Real Estate Two Ltd, which owns Main Street Shopping Mall: The following grounds of appeal are cited:

- The yard within the subject site is not in the ownership of the applicant. A certified deed of conveyance map is submitted to support this contention.

- The location plan submitted as part of an application (2238/91) for the extension of the Shopping Mall is submitted to further support the said contention.
- The proposed use of the yard for bin storage would pose a fire hazard and it would affect the future development potential of the Shopping Mall. The need for bins to pass through the proposed retail unit to and from the yard would be impractical and it would render the proposal sub-standard.
- The amenity that would be afforded by the proposed apartment is critiqued as follows: the kitchen/dining/living area would be too small, no internal storage space would be provided, the storage of bins beside the front door would lead to odours within the building, the proposed external space would be inadequate, and the apartment would be single aspect.

## 6.2. Applicant Response

- The accuracy of older maps is questioned.
- The existing dwelling house on the site, although derelict, is accompanied by the rear yard. Thus, it has a rear door into and rear windows overlooking this yard with an attendant right to light.

The applicant has a family link to the dwelling house, and he has applied to the Land Registry for first registration of the property.

He has submitted a statutory declaration made by Patrick O'Connor, MD of W K O'Connor & Sons Ltd, the company that extended the Shopping Mall, which testifies to the yard's association with the dwelling house rather than this Mall, and which further testifies to it being partly covered in recent years to allow for maintenance to the Mall with the consent of the applicant.

- The proposed internal bin store would be vented, and it met with the Planning Authority's approval.

The apartment would provide 84 sqm of floorspace/balcony space and so it would afford a satisfactory standard of amenity to future residents.

### 6.3. **Planning Authority Response**

- The Planning Authority is not in a position to adjudicate over the land ownership dispute between the first and third parties.
- The proposal would represent a sustainable redevelopment of a site that has been derelict for many years.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

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

- (i) Legalities,
- (ii) Land use and amenity,
- (iii) Water, and
- (iv) Screening for Stage 1 AA.

### **(i) Legalities**

7.2. The appellant has challenged the applicant's claim to be the owner of the entirety of the site, i.e. she contests his ownership of the rear yard. The applicant maintains his claim.

7.3. The parties have submitted copies of legal documents, including maps, by way of support for their conflicting positions. While they appear to agree that historically, the rear yard served the cottage, their disagreement relates to what may have transpired in more recent years and hence the present ownership of this yard.

- 7.4. Ultimately, the Board is not in a position to arbitrate upon an ownership dispute, such as the one that has arisen in this instance. Under Section 34(13) of the Planning and Development Act, 2000 – 2019, reliance can be placed upon the fact that “A person shall not be entitled solely by reason of a permission under this section to carry out any development.”
- 7.5. I conclude that the Board is in a position to assess and determine the current application/appeal in the normal manner.

**(ii) Land use and amenity**

- 7.6. Under the TDP’s town centre zoning of the site, there is no in principle objection to its proposed use as a shop and an apartment.
- 7.7. During my site visit, I observed that Well Lane South is predominantly a pedestrian route between Main Street and Beech Street, which is of utilitarian character, due to the presence of blank elevations, yard gates, and ventilation systems. It is also used for the parking of vehicles, which can access this Lane from the NE off Main Street. The Lane is the subject of public lighting and CCTV surveillance. The amenity afforded by it is limited.
- 7.8. The proposed shop would be accompanied by a store and a w.c. This shop would have a connecting door to the rear yard, wherein bins and bicycles could be stored.
- 7.9. The proposed self-contained apartment would be laid out to provide continuous kitchen/dining/living accommodation at first floor level and a bedroom with an en-suite at second floor level. Both floors would be accompanied by balconies that would overhang Well Lane South. This apartment would have a single northerly aspect and it would be served by an internal bin store beside the front door.
- 7.10. The appellant critiques the proposed shop insofar as the storage of bins in the rear yard would pose a fire risk and it would affect the development potential of the adjoining Shopping Mall. She also critiques the proposed self-contained apartment on the basis that it would be too small, it would be single aspect, and it would have no internal storage only an internal bin store, which would be a source of odours.
- 7.11. The applicant has responded to the above critique of the proposed self-contained apartment by stating that its floorspace would be adequate for a one-bed residential unit and the internal bin store would be capable of being vented.



- 7.12. I acknowledge with the Planning Authority that the replacement of the derelict cottage on the site with a new building would in-principle be welcome. The design of the proposed replacement building would generally be acceptable. The shop window should however be re-specified as one with three rather than two lights and the sides to the balconies should be simplified by the omission of the cross-work pattern.
- 7.13. Generally, I recognise that the provision of any residential unit on the site would enjoy limited amenity, due to the above cited utilitarian character of Well Lane South. Under the current proposal, the provision of such a unit on upper floors would ensure a degree of privacy that would not be available at ground floor level. The floor and balcony space would be adequate to serve a one-bed apartment and an internal store would be available, albeit one that would be accessed via the bedroom. The specification of a single northerly aspect would not be ideal: The provision of first and second floor balconies on the front (northern) elevation would ensure the expansion of lighting and outlook options for future residents and so it would be of some compensation.
- 7.14. Nevertheless, I am concerned that the proposal for a self-contained apartment over the shop, effectively removes the opportunity for this apartment to be served by the rear yard for the purpose of bin and bicycle storage. If instead this apartment were to be tied to the use of the shop and so provide associated accommodation, then both the shop and the apartment would be capable of being served by the rear yard, thereby negating the specification of an internal bin store with the attendant issue of odours that would need to be mitigated.
- 7.15. I acknowledge that the aforementioned tying of occupation would make it more challenging for a future user to be found. However, I consider that, under the current proposal, it would be the only way to ensure the necessary external storage of bins and to provide the space that may be needed for bicycle storage at ground floor level. I, therefore, propose that any permission be made the subject of a condition that requires tied occupation.
- 7.16. I conclude that, whereas there is no in-principle objection to the proposed uses of the site, under the current proposal, the only way to ensure that a satisfactory standard of amenity would be available to future residents is to require that they be involved in the running of the shop.

### **(iii) Water**

- 7.17. The applicant proposes that the development would be connected to the public water mains and the public foul and surface water sewerage system. Following receipt of further information, Irish Water has raised no objection to these proposals.
- 7.18. The OPW's flood maps do not indicate that the site is the subject of any identified flood risk.

### **(iv) Screening for Stage 1 AA**

- 7.19. The site is not in or beside a Natura 2000 site. It is a small, fully serviced, urban site, which under the current proposal would be redeveloped. Accordingly, no Appropriate Assessment issues would arise.
- 7.20. Having regard to the nature and scale of the proposal and the nature of the receiving environment, no Appropriate Assessment issues arise, and it is not considered that the proposal would 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. That permission be granted.

## **9.0 Reasons and Considerations**

Having regard to the Killarney Town Development Plan 2009 – 2015, it is considered that the proposed redevelopment of the site to provide a retail and a residential use would comply with its town centre zoning objective. Provided the occupancy of the residential unit is tied to the shop, a satisfactory standard of amenity would be afforded to future residents. The proposal would be capable of being serviced by the public water mains and public sewerage system. No Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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 on the 22<sup>nd</sup> day of July 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) A detailed design of the shop front, which shall incorporate a three light shop window and painted timber joinery to this window, shop and apartment doors, fascia, and upper floor window and doors in the front elevation, shall be prepared.</p> <p>(b) A detailed design of the balconies shall be prepared, which shall entail their simplification by means of the removal of the cross-work pattern to their sides.</p> <p>(c) A colour scheme for the rendered elevations shall be prepared.</p> <p>(d) A detailed design of bin and bicycle storage spaces in the rear yard shall be prepared.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of visual amenity and in order to ensure an adequate standard of amenity to future residents.</p>
3.	<p>The apartment shall only be occupied by a household within which at least one person is involved in running the shop underneath it.</p>

	<p><b>Reason:</b> In order to ensure that occupancy of the apartment and shop are tied so that residents can access the rear yard and so enjoy a satisfactory standard of amenity.</p>
4.	<p>Prior to the installation of any fascia shop sign, the details of such a sign shall be submitted to and agreed in writing with the Planning Authority. No other signage shall be installed without the benefit of planning permission.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
5.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution of €3150 (three thousand one hundred and fifty euro) 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. The application of any indexation required by this condition 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.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Hugh D. Morrison  
Planning Inspector

3<sup>rd</sup> April 2020