



An  
Bord  
Pleanála

## Inspector's Report ABP 308394-20

<b>Development</b>	Change of use of holiday apartments to use as residential apartments.
<b>Location</b>	Blocks A, B and D, Hotel Killarney, Park Road and Cork Road, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/706
<b>Applicant</b>	Octavius Property Company
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	1. Sheila O'Sullivan 2. Crimmins Hotel and Leisure Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	04/12/20
<b>Inspector</b>	Pauline Fitzpatrick

## **1.0 Site Location and Description**

The 3 no. 3 storey apartment blocks to which the application refers are within a larger tourist accommodation complex anchored by a hotel and hostel at the roundabout junction of Park Road, Upper Park Road and N22 Cork Road to the east of Killarney town centre. The complex has frontage onto Park Road and Cork Road with access from both.

Block A is in the north-western corner of the site with Blocks B and D to the south behind the hotel. The latter form a U-shape with Block C which does not form part of this application. The area in-between is laid out as open space. The terraces of dwellings located to the south of Block A and east of Block D also form part of the complex. Surface car parking serving both apartment blocks and the hotel is prevalent within the site.

## **2.0 Proposed Development**

Change of use of apartments in Blocks A, B and D from holiday use to residential use.

- Block A - 18 no. 2 bedroom units
- Block B - 15 no. 2 bedroom units
- Block D – 15 no. 2 bedroom units

The application is accompanied by a Planning Report including a Design Statement and Appropriate Assessment Screening.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission subject to 6 conditions. Of note:

Condition 3: No part of the 48 no. apartments to be used for the provision of overnight commercial guest accommodation without a grant of permission.

Condition 5: No ancillary plant or equipment to be placed on the external walls or roof without a grant of permission.

Condition 6: Management scheme for maintenance of services and communal areas to be submitted to planning authority.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner's report includes EIA – Preliminary Examination and AA – Screening. It notes:

- permission has been granted for change of use of most of the other holiday homes within the development to residential accommodation.
- The apartment blocks are no longer used or owned by the hotel as intended in the original application.
- The apartments are well designed. They are broadly consistent with the relevant standards as set out in the apartment guidelines which allow for such change of use proposals.
- Given the planning history of the site including change of use of Block C and the fact that Killarney is designated as a Rent Pressure Zone, the change of use is acceptable and appropriate. The units will help address the identified shortage of residential units for rent in Killarney town.

A grant of permission subject to conditions recommended.

#### **3.2.2. Other Technical Reports**

Housing Estates Unit details issues on which further information is required including incorporation of shared services that support the development into the site boundary line, open space, road markings, visitor parking, boundary treatment onto shared public areas, walking routes and bicycle parking.

Kerry National Roads Design Office has no observations

### **3.3. Prescribed Bodies**

Transport Infrastructure Ireland has no observations to make.

### 3.4. Third Party Observations

Objections to the application received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3<sup>rd</sup> Party appeals received and summarised in section 6 below.

### 4.0 Planning History

**17/1254** – permission granted in February 2018 for change of use of 15 no. apartments in Block C from holiday use to residential.

**17/371** – permission granted in June 2017 for change of unit 1603 from holiday home to residential.

**16/507** – permission granted in July 2016 for change of unit 1602 from holiday home to residential.

**15/371** – permission granted in June 2015 for change of use of unit 1601 from holiday home to residential.

**14/2059** – permission granted in June 2014 for change of use of units 1610, 1611 and 1612 from holiday homes to residential.

**03/4042** – permission granted in October 2003 for extension to existing hotel comprising of 40 no. residents' suites, 4 no. blocks containing 63 apartments and 24 no. holiday homes in 5 terraces.

*Condition 20: The proposed commercial tourist accommodation development and the existing hotel shall remain as on integral unit and under the one ownership, as indicated on particulars received by the Planning Authority from the applicant on 04/09/03. Any proposed change to the existing planning unit shall be the subject of a separate planning application.*

*Reason: In the interests of orderly development and in order to regulate the development*

## 5.0 Policy Context

### 5.1. Development Plan

Note: The Killarney Municipal District LAP was adopted in December 2018. It states that the Killarney Town Development Plan 2009-2015, as extended, will continue to apply to the area formerly administrated by Killarney Town Council. That plan will remain in force as the relevant development plan for the former town council area until the next Kerry County Development Plan is adopted in 2021.

#### **Killarney Town Development Plan 2009-2015 (as extended)**

The site and all 3 no. blocks are in an area zoned R2 – Existing Residential.

### 5.2. Natural Heritage Designations

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. **Crimmins Hotel and Leisure Ltd.** (submission by O'Donoghues Solicitors on its behalf which is accompanied by a report from Ger O'Keeffe Consulting Engineers Ltd.)

- The entire campus was initially developed as a holiday facility. A grant of permission would result in a complete change in ethos and would detract from the amenities. There is 190 bedroom hotel and a 170 bed hostel on the site.
- The original planning permission governing the apartment blocks within the overall hotel complex included a condition which restricted the use of the apartments to short term letting/tourist related uses only.
- Condition 20 attached to permission ref. 03/4042 requires the proposed tourist accommodation and the existing hotel to remain as one integral unit under one ownership with any change to be subject to a separate planning application.

- The proposal would be detrimental to Hotel Killarney which is integral to the hotel and accommodation sector in the town.
- The applicants only have limited rights. The roads and open spaces are part of the hotel ownership.
- The applicant owns only 31 parking spaces adjacent to Blocks A and D which is inadequate for the 48 apartments.
- An increase in traffic volumes will give rise to traffic hazard.
- Refuse facilities are considered inadequate. That to the front of Block A creates nuisance. The bin storage for Block D is outside the site boundary. There should be sufficient communal storage area to satisfy the three-bin system and segregation of waste.
- The kitchens are small and are unsuitable for permanent residential accommodation.
- There is no boundary screening or landscaping. Separation of the ground floor apartments in the various blocks cannot be provided as the applicant does not own the lands.
- The apartments do not comply with the 2018 guidelines for apartments.
- Bicycle parking is required.
- No detail has been provided as to the management of the units.
- The apartments would be substandard due to lack of adequate facilities.
- The permissions for the change of use for Block C and the dwellings should not be relied on. It is considered that the planning authority erred in granting the change of use of Block C.

**6.1.2. Sheila O’Sullivan** (accompanied by supporting detail)

- The applicants should have sought permission for retention of use as residential units. Section 5 declaration issued to the appellant in June 2017 stated that the change of use of permitted hotel apartments to residential use would comprise a material change of use. Block A has been in use for

permanent residential apartments for a considerable period of time. The application should be considered invalid.

- The lands are zoned for tourism use.

## **6.2. Applicant Response**

The two submissions by Genesis Planning Consultants on behalf of the applicant in response to the appeals can be summarised as follows:

### **6.2.1. Compliance with National Policy, Development Plan and Apartment Guidelines**

- The proposal accords with objectives 3A, 4, 11, 13 and section 4.5 of the National Planning Framework and the overarching policy to increase residential development in urban areas. This is particularly relevant given the lands are both infill and brownfield.
- The current Killarney Town Development Plan requires 685 units to be provided between 2015-2021. Objective POP-01-G requires at least 30% of new housing development to be delivered within existing built up areas on infill and/or brownfield sites.
- All 3 no. blocks are within an area zoned R2 - Existing Residential in the Killarney Town Development Plan.
- Precedent has been set for change of use of tourist accommodation to use as residential accommodation. Permission was granted for change of use of Block C to residential use with change of use from holiday homes to residential use also secured.
- The proposal is compatible with the established pattern of development in the area.
- The apartment guidelines allow for a level of flexibility in terms of application of the standards and SPPR's on building refurbishment schemes.
- Conditions can ensure the necessary requirements are met in terms of management and bicycle parking.
- 4 no. units are proposed to meet Part V requirements.

#### **6.2.2. *Parking and Traffic***

- 55 no. parking spaces are to serve the residential units.
- Visitor parking adjacent to the site is available.
- The proposal represents a 'no change' scenario. The change of use will not result in any increase in parking requirements or lead to a substantial increase in traffic volumes.
- As per the Apartment Guidelines the location can be regarded as an intermediate urban location. The site is served by public transport and is within walking distance of the town centre and train and bus station. The guidelines recommend consideration of a reduced overall car parking standard.
- A contribution in lieu of the shortfall could be attached by way of condition should the Board consider it appropriate.
- The proposed change of use is consistent with what has already been deemed acceptable in terms of parking arrangements for other units on-site.

#### **6.2.3. *Communal Facilities***

- The communal open spaces are existing and the proposal is a 'no change scenario' as residents will continue to use the existing green spaces within the overall site.
- The existing open space areas available to serve the apartments totals 2560 sq.m. This exceeds the requirements as set out in the Apartment Guidelines.
- The existing open space was deemed acceptable to serve the residents of Block C under permission ref. 17/1254.

#### **6.2.4. *Layout and Design of Blocks and Ancillary Services***

- The proposal is a 'no change scenario' in terms of bin storage area.
- The apartments meet the minimum floor areas as set out in the Apartment Guidelines. The guidelines allow for a level of flexibility on building refurbishment schemes.

- Block C has secured permission for change of use to residential. It is under separate ownership.

#### **6.2.5. *Extent of Ownership***

- The footprint of Blocks B and D, only, being included in the site boundary is on the basis that the change of use seeks permission to solely alter the use of the blocks and not change the use of the existing on-street parking spaces. The same rationale applies to the open space.
- The registered easements, rights and privileges which relate to the lands provide for the use of the common areas by residents in Blocks A, B and D (legal correspondence submitted in support).
- Legal matters raised regarding rights of access are not for the planning system to determine (ie. *McCallig v . An Bord Pleanala*). Section 28 of the Development Management Guidelines for Planning Authorities and Section 34(2)(a) of the Planning Act are also relevant.

#### **6.2.6. *Section 5 Declaration***

- It is not disputed that the development subject of the application constitutes development.
- Any historical declarations determined by the planning authority are not relevant to the current proposal.
- The owner and lease operator were not consulted by the planning authority at the time.
- It is ultra vires and irrelevant for a historical section 5 referral to be considered under this appeal. Legal precedent cited.

#### **6.2.7. *Use of Lands and Historical Matters***

- The Planning Authority was satisfied as to the nature and extent of the development as described.
- There are leases in place for short term letting agreements. They are in use as holiday apartments. Claims of unauthorised development in 2017 are refuted.

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

The Section 5 declaration referenced stated that the change of use to residential use was not exempted development and required planning permission.

### **6.4. Observations**

None

### **6.5. Section 131 Notices**

On the basis of the potential for the development to have significant effects on an SAC certain prescribed bodies were invited to make a submission/observation on the appeal.

No responses received.

## **7.0 Assessment**

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

- Overview and Principle of Development
- Nature and Extent of Development and Site Boundary
- Amenities of Prospective Occupants
- Parking and Traffic
- Other Issues
- Appropriate Assessment

### **7.1. Overview and Principle of Development**

- 7.1.1. The apartment blocks to which the application refers form part of what was developed as a holiday complex associated with a long established hotel on the site. In addition to the hotel the complex originally comprised of a hostel, 4 no. blocks of apartments containing 63 no. 2 bedroom units and 24 no. holiday homes in 5 no. terraces. The said apartments and holiday homes were developed on foot of a permission granted under 03/4042 in October 2003. Condition 20 attached to the

decision required the development to be retained as one planning unit and any alteration was to be subject of a separate permission.

- 7.1.2. The overall nature of the complex has been somewhat diluted by the fact that permission has been secured for the change of use of units from holiday to residential accommodation. Permission has been secured for the change of use of the 15 apartments in Block C from holiday to residential accommodation under ref. 17/1254. In terms of the dwellings permission has also been secured for change of use for 6 of the 8 no. units in the block to the south of Block A. Whilst the appeal responses delineate a change of use of the units in the terraces in the eastern part of the complex (see Figures 1 and 6 of response received 28/10/20) no details of the permissions effecting these changes have been provided with no reference to same made in the planner's report on file.
- 7.1.3. In terms of the national, regional and local planning policies, including the existing R2 residential zoning of the lands and the requirements in terms of providing for residential development, I consider that the proposed change of use is acceptable in principle. The site is akin to an intermediate urban location as defined in the Apartment Guidelines. It is within walking distance of Killarney Town Centre and the bus and train station, with the immediate vicinity providing for local service needs in terms of retail and services.
- 7.1.4. Notwithstanding, the acceptability or otherwise of the development is predicated on other planning considerations being met. I submit that in terms of the specific characteristics of the application the primary consideration is the securing of adequate amenities for prospective occupants. I shall address this matter below.

## **7.2. Nature and Extent of Development and Site Boundary**

- 7.2.1. The proposal is for the change of use of 48 no. apartments in three blocks from holiday to residential accommodation. No works in any manner are proposed to the units or the apartment blocks. The agent for the applicant contends that the proposal entails a 'no change scenario' with respect to the amenities and services in support of the units.
- 7.2.2. In my opinion of particular import is the extent of the lands to which the application refers as delineated on the relevant plans. The site is divided into three discrete sections with the red line restricted to the perimeter of the blocks subject of the

appeal. There does not appear to be any consistency in the approach taken to this delineation.

7.2.3. In summary I note:

7.2.4. **Block A** is located in the north-western corner of the complex and has frontage onto Park Road. It contains 18 no. 2 bedroom apartments. The red line delineation provides for the car parking areas to the north and south of same accounting for 24 no. spaces, 2 no. bin stores in addition to the area to the west of the block.

7.2.5. **Block B** is located to the rear of the hotel with an east -west orientation. In this instance the red line boundary is effectively the footprint of the building and does not include the parking spaces located to the west. It would appear than the bin store serving same is also outside the line.

7.2.6. **Block C** is also located to the rear of the hotel and forms a courtyard with Blocks B and C. It has an east-west orientation. In this instance the red line boundary includes some, but not all of the parking spaces located to the east. 7 no. spaces are within the boundary. Again, the bin store serving the block is outside the line.

7.2.7. On this basis the ancillary services required to support the apartment units including car parking, open space and, in some instances, bin store are outside the site boundary to which the application refers. Whilst I note and acknowledge the registered easements in terms of (a) rights of way over all the common areas; (b) passage and running of utilities and (c) rights to connect up to utilities and their repair, I am not satisfied that this would allow for the applicant to undertake any necessary works that may be required to facilitate the development or that condition(s) attached to a permission could be appropriately enforced.

7.2.8. I submit that any application for such a change of use should provide, within its boundary, the ancillary facilities which are an integral part in ensuring a proper standard of development and in providing for adequate amenities to the prospective occupants. This may require the consent of the landowner to include the lands. On this basis I consider that the application before the Board is unacceptable.

7.2.9. The fact that permission was secured for the change of use of Block C under ref. 17/1254 under comparable circumstances cannot be considered to set an acceptable precedent in this regard. I note that the said block is under different

ownership. As in the current case the red line boundary in that instance comprised the footprint of the building only.

### **7.3. Amenities of Prospective Occupants**

7.3.1. The blocks to which the appeal refers form part of which was originally an integrated tourism accommodation scheme and it is reasonable to suggest that the development as originally proposed and granted in 2003 would have been assessed against what were considered reasonable standards for holiday accommodation at that juncture. The scheme is largely open with no delineation between the accommodation types. Whilst the holiday homes/previous holiday homes are discreet in terms of parking provision and open space, the area is characterised by surface parking and green areas with no delineation between the hotel and apartments.

7.3.2. In terms of an assessment of the scheme relative to the provisions of the prevailing Apartment Guidelines (2018) I note the following:

- The scheme provides for 48 no. 2 bedroom units with no mix. This is not at variance with the requirements of SPPR1 and SPPR2
- I note that the apartments all exceed the 73 sq.m. minimum for a 4 person 2 bedroom unit as per SPPR3.
- Save for corner units the units are largely single aspect.
- The floor to ceiling heights of 2.5 metres at upper floor levels exceed the 2.4 metre recommended minimum but fall short of the 2.7 metre requirement for ground floor units as per SPPR5
- The number of units per core does not exceed 12 and complies with SPPR6.
- The units do not have internal storage.
- None of the ground floor units in any of the 3 no. blocks have delineated private amenity space. This equates to 6 apartments units in block A, 5 no. units in Block B and 5 no. units in Block C. The apartments in Block A face out onto the access road and footpath or the space to the rear (west) whilst those in Blocks B and D face directly onto the green space in-between. There

is no clear distinction with no boundary treatment and/or 'privacy strip' between the two.

- The refuse storage areas are small and the means for the appropriate segregation of waste not detailed.
- The open space between Blocks B and D and to the east of the latter exceeds the minimum requirements of the guidelines.
- No bicycle parking has been delineated.

7.3.3. As noted previously the applicant's case is predicated on a 'no change scenario' in that only the nature of the units is to change. Where the apartment standards requirements are not met repeated reliance is placed on the fact that the guidelines allow for a relaxation in standards in building refurbishment schemes.

7.3.4. Whilst certainly there are aspects that cannot be altered such as the percentage of dual aspect units and floor to ceiling heights, absolutely no effort has been made to provide for private amenity space to the ground floor units and the appropriate distinction of the boundary between private and public space. Details of the refuse storage facilities and their improvement to meet current requirements could have been provided. In addition no bicycle parking and storage facilities are delineated. Whilst the agent for the applicant considers that the latter issues, in addition to the requirements in terms of management of the apartment scheme, can be addressed by way of conditions, the strictures in terms of the red line boundaries and absence of evidence that the applicant can undertake works outside of the said boundaries as discussed above renders such an approach as unacceptable.

#### **7.4. Parking and Traffic**

7.4.1. As discussed above the extent of the site boundaries includes, in some instances, adjoining parking and in others none. The logic of this approach has not been forthcoming.

7.4.2. The applicant in the appeal response states that 55 no. parking spaces are available for the 48 no. units. This may be considered acceptable in such an intermediate urban location where a relaxation in the parking requirements can be considered. However it is not clear what spaces are to be allocated. Save for those within the red line boundary around Blocks A and D no detail has been given as to the location

of the other spaces. In such an open complex with both the hotel and hostel availing of the surface parking areas I consider that it is reasonable to seek the demarcation of spaces for the exclusive use of the apartments. As discussed above the approach to the site boundary delineation is seriously problematic in terms of requiring the carrying out of works outside of same. On this basis it is not possible to apply a condition requiring the delineation and reservation of parking spaces for the apartments use exclusively.

- 7.4.3. I accept the view that the change of use from holiday to residential accommodation would not, of itself, have any material impact in terms of vehicular movements.

#### **7.5. Other Issues**

- 7.5.1. The Section 5 declaration referenced by the 3<sup>rd</sup> appellant is noted. The application, by seeking permission for the change of use from holiday to residential accommodation, acknowledges that it constitutes a material change of use.
- 7.5.2. Whether or not a change of use has already occurred in terms of the use of some or all of the apartments for residential accommodation is a matter for the planning authority. The application before the Board for assessment is for the change of use, only.

#### **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and extent of the development entailing the change of use of the existing apartments from holiday to residential accommodation, only, it is concluded that no Appropriate Assessment issues arise as 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**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the extent of the site to which the application refers as delineated by the red lines on the drawings accompanying the application, which do not include lands comprising of the integral ancillary facilities such as car parking and open spaces and, on the basis of the submissions made in connection with the planning and the appeal, the Board is not satisfied that the applicant has sufficient interest in the lands on which the ancillary facilities are located to carry out works on the lands or has the approval of the person who has such sufficient legal estate or interest. On this basis the Board is not satisfied that the proposed development would not constitute a substandard form of development or that it would provide adequate amenities for prospective occupants. Accordingly it is considered that it would be inappropriate for the Board to consider a grant of permission for the proposed development in such circumstances.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**December, 2020**