



An  
Bord  
Pleanála

## Inspector's Report ABP.310011-21

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<b>Development</b>	(a) Change of use of basement to family flat ancillary to dwelling house (b) Make elevational changes to dwelling house
<b>Location</b>	Castleconway, Killorglin Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/870
<b>Applicant(s)</b>	Donna Morgan
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant s.t. conditions
<b>Type of Appeal</b>	Third party
<b>Appellant(s)</b>	Ivor Falvey
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> June 2021
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located within the town of Killorglin to the north-east of the central part of the town. It forms part of a residential development of 8 holiday home units overlooking the River Laune, known as Killorglin Riverbank Lodges. The units are accessed via New Line Road and Market Road and by means of a private road serving the residential development. The ground levels fall sharply towards the river and the private road curves around the front and the rear of the units. The houses are oriented East-West with the west-facing elevations overlooking a communal green space and the river, which forms part of the Castlemaine Harbour SAC. The units are detached 2-storey over basement dwellings, with the lower ground floor at road level to the front (west) and the ground floor is level with the road to the east. The entrance to the units (front door) is accessed by means of a flight of external steps on the southern side of each unit. The buildings are set into the hillside and the lower ground floors, as originally designed, contain a single garage with utility area. The garage at No. 2 has been converted to a bedroom on foot of planning permission Reg. Ref. 07/3940.
- 1.2.** The site area is given as 0.015ha. The site comprises a 2-storey building, with a total floor area of 143.2m<sup>2</sup>. The lower ground floor is stated as 41m<sup>2</sup>, the ground floor as 62m<sup>2</sup> and the first floor as 40.2m<sup>2</sup>. The basement comprises a single garage with an internal floor area of c.20m<sup>2</sup> and a utility/storage area of c.19m<sup>2</sup>. The submitted plans indicate an oil tank at the rear of the garage (internal) and a block wall which separates most of the garage from the utility area.

## **2.0 Proposed Development**

- 2.1.** Permission is sought to convert the basement into a self-contained granny flat. The proposed apartment consists of a kitchen/dining/living room, a double bedroom a bathroom and storage area. The proposed development would be provided within the existing space and would necessitate the relocation of the oil tank outside of the building. The elevational changes would involve a new window to the bedroom and a new glazed door in lieu of the garage door.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant subject to two conditions. **Condition 1** required compliance with the plans and particulars submitted with the application and as further information on 23<sup>rd</sup> September 2020, 9<sup>th</sup> December 2020 and 3<sup>rd</sup> February 2021. **Condition 2** required that the proposed family flat extension and the existing dwelling house shall remain as one integral unit in one ownership and shall not be sold, leased/rented as separate dwelling units.

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

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

Clarification was needed regarding the use of the accommodation and whether it would be ancillary to the existing dwelling.

Further information was requested in respect of the matters highlighted above on the 9<sup>th</sup> of November 2020. The further information submitted on the 9<sup>th</sup> of December 2020 clarified that the accommodation would be ancillary to the existing house and included revised plans. It was required to be republicized and this occurred on the 3<sup>rd</sup> and the 26<sup>th</sup> of February 2021.

#### **3.2.2. Response to Further Information**

Further responses were received from the third-party appellant on the 1<sup>st</sup> and the 9<sup>th</sup> of March 2021. The third-party submissions will be summarised below. The main concerns as set out in the objections of 14<sup>th</sup> October 2020 and 26<sup>th</sup> February 2021 were reiterated.

**Permission was recommended subject to conditions.**

#### **3.2.3. Other Technical Reports**

**Roads Design Office** – no observations.

### **3.3. Prescribed Bodies**

**Irish Water** – no objection subject to conditions.

### 3.4. Third Party Observations

Ivor Falvey (appellant) made submissions on 14<sup>th</sup> October 2020, 1<sup>st</sup> March 2021 and 9<sup>th</sup> March 2021. It is stated that his objections are on his own behalf and on behalf of his siter, Joanna Falvey, who is the owner/occupier of No. 3. The objections raised may be summarised as follows:

- Overdevelopment of site – it is claimed that the applicant has advertised the property for sale and that the description includes the term “basement/garage area has full planning permission for a 1 bed apartment”. It is stated that this is blatantly untrue, false and misleading.
- Residential amenity – Overlooking and loss of privacy due to introduction of windows at Lower ground floor level.
- Ownership issues – The appellant and his family own five of the eight houses and they strongly object to the relocation of the oil tank to common ground adjacent to No. 3. The applicant has already placed an oil tank on this area of common ground which is not in her ownership and is in contravention of planning law.
- Inadequate details of waste-water management – the application form states that wastewater is to be disposed of by means of onsite treatment system and that surface water would be disposed of by means of a soakpit. However, no details have been provided.

### 4.0 Planning History

**8/5/85749 (Ref. 91/1271)** – planning permission granted by board for 8 holiday units, reception unit and boathouse subject to a condition which required the omission of the basement parking areas.

**94/68** – Retention permission granted for reception building and sign.

**PL08.095827 (Ref. 94/549)** – Permission granted for retention of houses as constructed, change of use of existing voids into storage areas for boats and sports equipment, subject to a condition restricting the use of the void areas to the storage of boating/sports equipment and the openings to be fitted with solid unglazed doors.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2015-2021

#### 13.7 Family/Granny Flat Extensions

- The creation of a granny flat/family flat to be occupied by a member of the occupant family is generally acceptable, provided it is not a separate detached unit and it is possible to provide direct access to the rest of the house.
- There shall be no permanent subdivision of the garden/private amenity space.
- The flat shall not be let, sold or otherwise transferred, other than as part of the overall property and shall revert to being part of the original house when no longer occupied by the family member.
- The design should ensure that the flat forms an integral part of the main dwelling unit capable of reintegration for single family use and from public view and retains the appearance of a single dwelling unit.

### 5.2. Killorglin Functional Area Local Area Plan 2010-2016

The site is located in an area zoned as **Existing Residential**. The objective for this zone is to provide and improve the residential amenities of existing residential areas. Zoning Map 2(b) indicates a proposed walkway alongside the river and a proposal for a road junction improvement at New Line Road. The LAP seeks to ensure the development of a compact urban form which will allow for the minimisation of car use and ensure that most facilities are within walking distance of every home. The following policy is of relevance -

**H-5** Ensure that residential densities reflect high quality design integrating with the overall image of the town and surrounding developments. Higher densities will be considered in the town centre or within close proximity to the town centre. Lower densities will be considered at out of centre locations.

### 5.3. Natural Heritage Designations

The adjacent River Laune forms part of the Castlemaine Harbour SAC (000343) which lies immediately to the east of the public open space in front of the housing units. Castlemaine Harbour SPA (004029) is located approx. 1.2km further north along the river and extends westwards at a distance of approx. 2.5km north of Killorglin. The Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (000365) lies approx. 5.5km to the southwest. Lough Yganavan and Lough Nambrackdarrig SAC (000370) is located approx. 7km to the southwest.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The third-party appeal was submitted by Ivor Falvey, who together with his family, owns part of the overall development and is a Director and Secretary of the Killorglin Riverbank Lodges Management Company. The main points raised may be summarised as follows:

- **Overdevelopment** – it is claimed that the granny flat would not form an integral part of the overall dwelling unit and is not connected internally to the main house. It is believed that it would be rented or sold as a separate unit which would result in overdevelopment of the site.
- **Non-compliance with Kerry CDP policy for family flats** – the basement apartment would not comply with the criteria contained in the CDP policy 13.7 for family flats. If granted, it would create a precedent for the conversion of the basement of other units within the development to self-contained flats which would be contrary to the proper planning and sustainable development of the area.
- **Residential amenity** – The proposed elevational alterations would introduce windows at lower ground floor level which would give rise to overlooking.
- **Land ownership issues** – the applicant has already moved the oil tank from the garage to a location that is considered to be outside of her ownership. A

copy of the folio numbers relating to each of the relevant areas is enclosed. It is claimed that the oil tank occupies an area of common land which is in the ownership of the Management Company. As the applicant does not have permission to do this, it is unauthorised in terms of the planning and building regulations and should be enforced against. The fact that it was moved prior to the determination of the case means that the development has commenced in advance of a Commencement Notice being served, which is unacceptable and means that the development is unauthorised.

- **Hazardous location of oil tank** – the siting of the oil tank immediately adjacent to the gable wall of the appellant’s sister’s house is unacceptable. It is located in close proximity to the boiler and is a fire hazard and contrary to the Building Regulations and would undermine the ability to obtain insurance. The potential for exhaust fumes and odours from the boiler reaching the balcony of the adjoining property is also unacceptable in terms of the residential amenity of No. 3.
- **Validity issues** – it is pointed out that the address of the appeal site is incorrect on both the planning application form and the first site notice. It is stated that this should have invalidated the application in the first instance.

## **6.2. Planning Authority Response to grounds of appeal**

The P.A. has not responded to the grounds of appeal.

## **6.3. First party response to grounds of appeal**

The first party has not responded to the grounds of appeal.

## **7.0 Assessment**

**7.1.** It is considered that the main issues arising from the appeal are as follows: -

- Compliance with Development Plan policy
- Overdevelopment and residential amenity
- Land ownership and validity issues

## **7.2. Compliance with Development Plan policy**

- 7.2.1.** The site is located in an established residential zone, within close proximity to the town centre and the range of amenities and services available. It is noted that the Killorglin Functional Area LAP identifies the tendency towards urban sprawl on the outskirts of the town and seeks to encourage increased densities within the town centre area and in close proximity of the facilities and services available there. In general terms, therefore, the proposed development is broadly in accordance with these aims and objectives. However, the proposed development involves a change of use of part of a house to a self-contained apartment and as such, must be assessed against the criteria for family/granny flats which is set out in the Kerry County Development Plan at 13.7.
- 7.2.2.** The P.A. planning reports state that the applicant had clarified that the proposed unit is to be used as ancillary accommodation to the existing dwelling house and not as a stand-alone unit to be rented/sold. On this basis, the P.A. was satisfied that the proposed apartment would be ancillary to the use of the main dwelling, and that as such, it would come within the definition of a granny flat. However, I can find no correspondence from the applicant to this effect in the documents forwarded by the P.A. The site and newspaper notices were, however, revised to seek permission for elevational changes and a change of use of basement to family flat ancillary to the existing dwelling. The P.A. decision also includes a condition requiring both the main dwelling house and the family flat extension to remain as an integral unit in the one ownership and prohibited their independent sale, lease or rental as separate dwelling units.
- 7.2.3.** The criteria set out under Objective 13.7 require that a granny flat be designed such that it is fully integrated with the existing accommodation and can be reintegrated when no longer needed. The proposed development does not comply with all of these requirements. It is noted that the layout and split-level design of the dwelling does not lend itself to compliance with the specific criteria as it would be difficult to incorporate an internal means of access to the ground floor flat. On the other hand, there is no detailed information regarding the specific need for the self-contained element of the proposed flat. I am not aware of any personal circumstances which have been presented in support of the bona fides of the application. The Board may



wish to seek such further information in support of the proposed development, should it be minded to grant permission.

### **7.3. Overdevelopment and Residential Amenity**

- 7.3.1.** The appellant considers that the proposed apartment would result in significant overdevelopment of the site and would adversely affect the residential amenity of the dwelling house at No. 3. This is principally due to the relocation of the boiler and oil tank, (which have already been relocated) to a position directly adjoining the gable wall of this dwelling. This is considered to result in steam and odours emanating from the boiler and the fire hazard associated with the siting of both items immediately adjacent to the next-door dwelling. It is further submitted that the proposed development would introduce windows on the Lower Ground floor level which would give rise to overlooking and loss of privacy, and that the proposal would create an undesirable precedent resulting in the overdevelopment of the site.
- 7.3.2.** The appellant had also raised in the submissions to the planning authority, that the use of the basement areas had been the subject of two previous Board decisions, which it considered has a bearing on the current proposal before the Board. I would agree that it would be useful to review these planning permissions in the context of the issue of overdevelopment of the site in respect of the current application/appeal.

#### **Review of planning history – PL8/5/8549 (91/271) and PL08.095827 (94/549)**

- 7.3.3.** The original development of “an 8-unit holiday complex with a reception unit and boat house” was granted by the Board (**8/5/85749 – P.A. Ref. 91/271**) subject to the following condition
2. The houses shall be modified by omission of the basement car parks proposed in the case of 2, 4, 5, 6 and 7 and the reduction in floor levels of all houses by not less than 1.25m by reference to the levels shown for House no. 4. Details of the revised floor levels for all houses shall be submitted to and agreed with the planning authority before the development is commenced.

Reason: In order to integrate the structures with the surrounding area.

- 7.3.4.** As a result, the houses were constructed as two-storey dwellings but with a void area underneath which it would seem from the planning reports of the time were required in order to avoid the use of very substantial retaining walls due to the

steeply sloping site. The basement areas presented as blank walls with voids behind. Subsequently, permission was sought (94/549) to use the void areas for the storage of boats and sporting equipment in association with the recreational nature of the complex. The proposal to use the void areas for storage purposes included the insertion of doors and glazed wall flanking in each of the units, and this was refused by the P.A. The Board, (PL08.095827) decided to grant permission in 1995 subject to the following condition

- (a) The void spaces shall be used solely for the storage of sporting and boating equipment.
- (b) The openings to the void areas shall be fitted with solid unglazed doors.

The Inspector's Report relating to 095827 indicated that the "kernel of the appeal related to the 3-storey appearance which would be created by the provision of doors and a flanking glass in the basement front walls". It was considered reasonable to facilitate storage of boating equipment etc. within the void areas, but necessary to avoid the appearance of the structures as 3-storey developments in the interests of visual amenity.

**7.3.5.** In the intervening period, there appears to have been only one further planning permission granted in respect of the use of the basement areas, which related to Unit No. 2. Permission was granted by the P.A. (Reg. Ref. 07/3940) for a change of use of the basement garage to a bedroom subject to conditions, one of which required that the existing dwelling house and additional floor spaces shall remain as one integral unit under one ownership. Thus, the proposed development, if granted would represent a significant departure from the development of the complex as permitted. I would accept that the planning permission for No. 2 could be considered to create a precedent for the development of the void areas for residential use as opposed to purely storage as required by the Board's permission (095827). However, the creation of a fully self-contained unit would be a further departure from this permission.

**7.3.6.** As the self-contained unit would not have any additional private amenity space or car parking associated with it, it is likely that the proposed unit could generate additional demand for such facilities within the overall complex which could give rise to nuisance and loss of amenity to other residents. Should a grant of permission result

in further applications for similar development within the remaining units, it is considered that the planning authority might find it difficult to refuse such applications in the future. The combined effect of several additional units within the complex is likely to result in increased pressure on limited car parking and amenity space.

- 7.3.7.** In conclusion, it is considered that in the absence of any specific justification for the need for a self-contained apartment in the basement of the dwelling unit and of any information on how it would be used, the proposed development would result in overdevelopment of the site. The introduction of a window and patio door in the front wall would create the appearance of a three-storey dwelling and would adversely affect the use of the communal green space immediately adjacent to the unit. The proposal would therefore be inappropriate in terms of its design and scale and would injure the visual and residential amenities of the area. In regard to the location of the boiler and oil tank, it is considered that any related nuisance issues are matters for the planning authority to address in terms of the need for any enforcement, if deemed necessary.

#### **7.4. Land ownership and validity issues**

- 7.4.1.** The appellant believes that the oil tank and boiler have been placed on lands that are owned in common and under the control of the Management Company. It is considered that this is a civil matter that considered to be outside the scope of the application/appeal. Furthermore, a party shall not be entitled to carry out development solely on the basis of a grant of planning permission in accordance with Section 34(13) of the Planning and Development Act 2000 (as amended). Thus, the onus is on the applicant to ensure that she has sufficient legal interest to implement the development as proposed
- 7.4.2.** The appellants have also raised issues relating to the description of development and the incorrect address given in some of the relevant planning documents. I note, however, that the planning authority was aware of these deficiencies and provided the applicant with several opportunities to make the appropriate amendments to the said documents. It is considered that the revised site and newspaper notices contained the correct information and as such, the issue of invalidity appears to have been addressed in the course of the application.

## **7.5. Environmental Impact Assessment – Preliminary Examination**

- 7.5.1.** The proposed development relates to a change of use of part of a domestic property to a further domestic use and elevational changes. Although the site is located within 40 metres of a sensitive site, namely Castlemaine Harbour SAC, it is considered that having regard to the nature and small scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **7.6. Appropriate Assessment Screening**

- 7.6.1.** The site is located within 40m of one Natura site, namely Castlemaine Harbour SAC, (000343) where the River Laune forms part of this SAC. The river lies immediately to the east of the public open space in front of the housing units. In addition, Castlemaine Harbour SPA (004029) is located approx. 1.2km further north along the river and extends westwards at a distance of approx. 2.5km north of Killorglin. The Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC (000365) lies approx. 5.5km to the southwest. Lough Yganavan and Lough Nambrackdarrig SAC (000370) is located approx. 7km to the southwest.
- 7.6.2.** Given the distances involved, the nature and small scale of the proposed development and that the site forms part of a long-established residential development which is located in a mature urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## **8.0 Recommendation**

- 8.1.** It is recommended that planning permission be **refused** for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the steeply sloping nature and limited size of the site and to the design and layout of both the existing dwelling unit and of the proposed apartment, which is not directly connected to the main house, it is considered that the proposed development would not form a single integral dwelling unit

or facilitate the re-integration of the family flat into the main dwelling house when no longer required. The proposed development would, therefore, be inconsistent with the planning authority's policy on family flat extensions as set out in 13.7 of the current Kerry County Development Plan 2015-2021, would create an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the restricted nature and prominent location of the site overlooking the River Laune and to the pattern of development in the vicinity, the proposed extension of residential accommodation into the basement floor which opens directly onto the communal open space serving the overall development would create a 3-storey form of development in the middle of the row of houses and would result in an unsatisfactory standard of residential amenity for the existing and future occupants of the house. The proposed development would, therefore, result in overdevelopment of this constrained site, would seriously injure the residential and visual amenities of the area, and would be contrary to the proper planning and sustainable development of the area.

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Mary Kennelly  
Senior Planning Inspector

14<sup>th</sup> July 2021