



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310995-21

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|-------------------------------------|---|
| <b>Development</b>                  | Construct a detached two-storey dwelling house to form part residential accommodation and part self-contained unit to the front for short term letting complete with connection to public sewer & all associated site works on site no 1. |
| <b>Location</b>                     | Coollegreen, St. Margarets Road, Killarney, Co. Kerry.  |
| <b>Planning Authority</b>           | Kerry County Council  |
| <b>Planning Authority Reg. Ref.</b> | 20639   |
| <b>Applicant(s)</b>                 | Nessa Keogh.  |
| <b>Type of Application</b>          | Permission.   |
| <b>Planning Authority Decision</b>  | Grant Permission subject to conditions  |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Nessa Keogh.  |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 23 September 2021.  |
| <b>Inspector</b>                    | Bríd Maxwell  |

## 1.0 Site Location and Description

- 1.1. This appeal relates to an urban infill site located within a mature residential area at St Margaret's Road Killarney. The appeal site has a stated area of 0.031 hectares is currently grassed and is part of a larger greenfield located between two established single storey dwellings with a residential care home located to the rear. There are a number of institutional uses in the vicinity including Killarney Community Hospital to the southeast and St Columbanus Community Hospital to the north.

## 2.0 Proposed Development

- 2.1. The proposal involves permission to construct a detached two storey dwellinghouse to form part residential accommodation and part self-contained unit to the front for short-term letting complete with connection to public sewer together with all associated site works.
- 2.2. In response to the request for additional information it was clarified that the intended use is as a dwelling unit for the use of the applicant with an ancillary attached self-contained unit to be used for short term letting.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1 By order dated 6<sup>th</sup> July 2021 Kerry County Council issued notification of the decision to grant permission and 14 conditions were attached which included the following of particular note.

Condition 2 Development Contribution €5,830.00

Condition 4. *"The proposed development shall be located on the site in accordance with the site layout plan received on 20/05/2021. A minimum corridor width of 13.2m free from all obstructions including pillars shall be maintained on the L-7231 St Margaret's Road to the front of the site. This shall allow for development of public infrastructure which shall also serve this development."*

*A revised parking layout drawing taking the above into account shall be submitted with the application for permission consequent on outline permission.*

*Reason: In the interests of orderly development. ”*

Condition 6. The proposed development shall be used as single integrated dwelling unit with ancillary bed and breakfast use. The proposed self-contained short-term letting unit shall be rented as a suite rather than on a bedroom basis.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

3.2.1.1 Planner's initial report considers the first floor level balcony to be unacceptable on basis of negative impact on established residential amenity. Report notes Killarney Town's designation as a rent pressure zone and asserts that more favourable consideration would be given to a proposal for bed and breakfast rather than a separate dwelling unit. Applicant was advised at pre planning stage to set back the boundary wall to allow for the provision of a footpath along this side of the road which has not been shown.

3.2.1.2 A request for further information issued. Applicant was advised that the development description was considered misleading. Given designation of Killarney as a rent pressure zone more favourable consideration would be given to a proposal for a dwellinghouse with some bedrooms for B&B use. Applicant was requested to demonstrate adequate parking provision. Balcony to be removed and front boundary wall to be setback to provide for footpath.

3.2.1.3 Following submission of additional information the Planner's report considers the proposal to be acceptable and recommends permission subject to conditions.

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

3.2.2.1 Report Of Executive Engineer notes requirement for minimum corridor width of 13.2m free from all obstructions including pillars to maintain on the L-7231 St Margaret's road as per drawing 6301-001. This is to allow for public infrastructure to

which will also serve the development. Revised parking layout to be agreed. Surface water requirements and works subject to road opening license.

### 3.3. Prescribed Bodies

3.3.1 Submission from Transport Infrastructure Ireland indicates no observations on the case.

3.3.2 Irish Water. No objection subject to connection agreement, capacity requirements and all development in compliance with Irish Water Standards codes and practices.

### 3.4. Third Party Observations

3.4.1 Submission from Melissa Culloty. No 2 St Margaret's Road. Objects to the proposal on grounds of excessive scale and density, impact on visual amenity and negative impact on adjoining garden. Inclusion of commercial short term letting in a rent pressure zone is not in keeping with the development plan. Parking arrangement may pose a traffic risk. Overlooking and loss of privacy. Light and overshadowing. Development is considered out of character.

3.4.2 Second submission maintains objection.

## 4.0 Planning History

Concurrent application by the first party on the adjoining site to the east.

**20/641** Outline Permission granted on 30/07/2021 on the adjoining site to the east for construction of 1 no two storey dwelling house complete with connection to public sewer together with all associated site works on site no 2. I note that detailed plans and particulars in respect of 20/641 have not been provided on the Board's file however I note that the schedule of conditions available for viewing on Kerry County Council online planning viewer shows condition 4 is the same as condition 4 subject of the current appeal. This decision has not been appealed.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Killarney Town Development Plan 2019-2021 as extended and varied refers. The site is within an area zoned built up area. Existing built up areas of mixed use.

Policy INFRA-01 h “To require the set back of building or road frontage lines and new structures as required to improve sight lines or to provide for footpath and road improvements.”

Policy INFRA-04 b “To construct lighted roadside footpaths on both sides of all public roads. Where appropriate, special levies to cover the cost of provision of same will be applied to new developments that give rise to the need for same.”

Policy INFRA-04 c “To create pedestrian priority concepts, cycle lanes and off road cycle paths as required including proposed routes outlined in blue on the infrastructure map during the lifetime of the plan.

Policy INFRA0-4 o “Provide cycle lanes throughout the town at appropriate locations.”

### 5.2. Natural Heritage Designations

5.2.1 The site is not within a designated area. The nearest such sites include Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) which occurs within 300m to the north and west and Killarney National Park SPA (Site code 004038) is within approximately 300m to the west.

### 5.3. EIA Screening

5.3.1 Having regard to the nature and scale of the proposed development within the development boundary of Killarney town on serviced lands, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Healy Cornelius Architectural design practice on behalf of the first party. The appeal relates to condition 4 and is summarised as follows:

- The condition effectively requires a setback of the existing roadside boundary by 3.9m.
- Note that the recommendation arises from recommendation of Executive Engineer including drawing showing a requirement to accommodate 2x1.8m footpaths, 2 1.8m cycle paths and a 6.0m road carriageway.
- The corridor width is to facilitate the provision of public infrastructure in excess of the immediate needs of the proposed development, where such public infrastructure will serve the public at large.
- As part of further information response it was proposed to set back the existing boundary by 1.5m to provide a footpath.
- Design Manual for Urban Roads and Streets 2019 provides a basis for seeking a reduced road width to St Margaret's Road. Proposed widening would exacerbate the existing problem of excessive speeds. Increased hard surfacing would contribute to the effects of climate change and reduce the visual amenities of this local urban residential area.
- Rearrangement of parking layout would result in loss of amenity space.
- Proposal is contrary to the principles of good road design
- Requirement to pay contribution of €1,264.50 towards roads and transport infrastructure on top of ceding 3.9m of the land is unreasonable and unfair.
- Applicant has no objection to the provision of well planned and necessary public infrastructure in the future and is willing to allow the Council through appropriate statutory mechanisms to acquire or otherwise her land for the provision of same.
- Inappropriate for the Planning Authority to use its statutory function to require applicant to cede land to form art of the public road for the benefit of the general

public in the absence of any development objectives / plans that require such a widened road.

- Condition is not properly supported by the Planning Authority or by any proposed Kerry County Council public infrastructure development.
- Notably condition 4 refers in error to the application for permission consequent on an outline permission.
- Clarification required in relation to condition 7 and 8 which would appear to prevent connection to public stormwater sewer located on St Margaret's road by requiring surface water to be disposed on site.
- While the development is part residential and part commercial the effect of condition 6 is to make the development a single unit with ancillary B&B. As this would not require planning permission and would be exempted development therefore the applicant requests that the Board reduce the fee and return the excess to the applicant.

## 6.2. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

## 7.0 **Assessment**

- 7.1. Having reviewed all documents submitted with the planning application and appeal and having visited the site I consider that the assessment of this appeal can focus on the matters raised within the grounds of appeal. The issue of appropriate assessment also needs to be addressed.
- 7.2. I note that in relation to the questions raised on the matter of the planning application fee, the Board wrote to the applicant on 25<sup>th</sup> August 2021 noting that the appeal and planning application documents had been examined and the Board is satisfied that the correct fee had been paid in this instance.
- 7.3. As regards Condition 7 which requires connection to public water and public sewer system to the satisfaction of Irish Water and Condition 8 which is as follows "Surface Water from the development shall be collected and disposed of on site and shall not

be allowed flow onto the public road or adjoining properties. Precise details shall be agreed with the Planning Authority prior to the commencement of development.” The first party questions whether connection to storm sewer is permitted given reference to disposal on site. I acknowledge the potential for confusion. I note that the submission from Irish Water indicated satisfaction with the proposal to connect to public foul and storm sewer and I consider that an appropriately worded condition would clarify the issue.

7.4 The main issue raised within the appeal is the matter of the setback of the front roadside boundary wall to provide for future footpath and cycle lane along St Margaret’s Road. The Condition in question Condition 4 requires that *“The proposed development shall be located on the site in accordance with the site layout plan received on 20/05/2021. A minimum corridor width of 13.2m free from all obstructions including pillars shall be maintained on the L-7231 St Margaret’s Road to the front of the site. This shall allow for development of public infrastructure which shall also serve this development.*

*A revised parking layout drawing taking the above into account shall be submitted with the application for permission consequent on outline permission.*

*Reason: In the interests of orderly development. ”*

7.5 The First Party contends that the setback is excessive and that there is no basis for it in terms of objective or policy within the development plan. The condition arises from the recommendation of the Executive Engineer recommending the maintenance of a minimum corridor width of 13.2m free from all obstructions including pillars to be maintained on the L-7231 St Margaret’s road as per drawing 6301-001. I note that the same condition was applied in relation to the outline permission 20/641 on the adjoining site to the east and this decision was not appealed by the applicant (same applicant). In my view the condition is reasonable and is in line with the reasonable objectives of the development plan including Policy INFRA-01 h “To require the set back of building or road frontage lines and new structures as required to improve sight lines or to provide for footpath and road improvements.”, Policy INFRA-04 b “To construct lighted roadside footpaths on both sides of all public roads and Policy

INFRA-04c “To create pedestrian priority concepts, cycle lanes and off-road cycle paths as required including proposed routes outlined in blue on the infrastructure map during the lifetime of the plan and Policy INFRA0-4o to “Provide cycle lanes throughout the town at appropriate locations.” I note that the setting back of the boundary will also require the relocation of an existing ESB utilities pole.

7.6 On the issue of the development contribution, I note that the planning authority did not require the payment of a special contribution and condition 2 requiring payment of €5,830 was imposed in accordance with the General Development Contribution Scheme made in accordance with Section 48 of the Planning and development Act as amended.

7.7 As regards appropriate assessment the site is fully serviced and best practice construction management methods would constitute an integral component of construction works. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European Site in view of the sites’ Conservation Objectives and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

## 8.0 Recommendation

8.1. Grant Permission for the following reasons and subject to the following schedule of conditions.

### Reasons and Considerations

Having regard to the location of the site on zoned lands, the layout of the proposed development, 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 not be prejudicial to public health and would be acceptable in terms of traffic safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The proposed development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further information submitted on 20<sup>th</sup> day of May 2021, except as may otherwise be required in order to comply with the following conditions

Reason: In the interest of clarity.

2. The proposed development shall be used as a single integrated dwelling unit with ancillary bed and breakfast use.

Reason: In the interest of orderly development.

3. A minimum corridor width of 13.2m free from all obstructions shall be provided for on the L-7231 St Margaret's Road to the front of the site. A revised parking layout taking the above into account shall be submitted to the planning authority for written agreement prior to the commencement of development.

Reason: To provide for the development of public infrastructure which will also serve this development in the interest of traffic safety.

4. The road works associated with the proposed development including the setting out of the entrance, paving and surface finishes shall be carried out and completed in accordance with the requirements of the planning authority.

Reason: In the interest of traffic safety and orderly development.

5. Prior to the commencement of development details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and in the interest of visual amenity.

6. Water supply and drainage arrangements, including 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 and to ensure a proper standard of development.

7. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

8. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard ducting shall be provided to facilitate the provision of broadband infrastructure within the development.

**Reason:** In the interest of orderly development and the visual amenities of the area.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

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

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Bríd Maxwell  
Planning Inspector

29 October 2021