



An
Bord
Pleanála

Inspector's Report ABP 311399-21

Development	Demolition of 3 storey building and renovation and new build comprising 8 dwelling units.
Location	The Square and Castlemaine Road, Milltown, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/887
Applicant	Carnol Developments Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	1 st Party v. conditions
Appellant	Carnol Developments Ltd.
Observer(s)	None
Date of Site Inspection	24/11/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.126 hectares is located in the centre of Milltown. It is rectangular in shape with frontage onto both The Square and Castlemaine Road. The site stretches northwards to the rear of the single and two storey buildings that front onto Castlemaine Road to the east. There are a number of derelict buildings within the site which is largely overgrown. The 3 storey building that fronts onto The Square is vacant and in a deteriorating condition. It is bounded by a derelict site to the west and a two storey building in residential use to the east.

2.0 Proposed Development

The application was lodged with the planning authority on the 25/09/20 with further plans and details submitted 19/07/21 following a request for further information dated 18/11/21 with copies of revised public notices submitted 30/07/21. As amended the proposal entails:

- Demolition of single storey building in north-eastern corner
- Renovation and refurbishment of three storey building fronting onto The Square comprising of
 - 2 no.1 bed apartments
 - 2 no. 2 bed duplexes
- Demolition and reconstruction of Coach House as 2 bed dwelling
- 3 no. 4 bed dwellings.

The 3 no. dwellings are to be served by a new vehicular access from Castlemaine Road with pedestrian access to the remainder of the scheme with links from Castlemaine Road and The Square. The converted coach house, apartments and duplex units will be served by on-street parking.

The application is accompanied by:

- Planning Report
- Structural Reports (2 no.) on Existing Buildings
- Road Safety Audit

- Shadow Study
- Car Parking Study

3.0 **Planning Authority Decision**

3.1. **Decision**

Grant permission for the above described development subject to 18 conditions:

Condition 5 (a) section 47 agreement that restricts all houses and duplex units to first occupation by individual purchasers.

(b) the agreement to be applicable for duration of the permission except where, after 2 years from the completion of the specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to sell each specified unit for use by individual purchasers and/or those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) determination of (b) by the planning authority following submission of satisfactory documentary evidence from the applicant.

Condition 6: Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, no part of the permitted units shall be used for the provision of overnight commercial guest accommodation without prior grant of permission.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The **1st Planner's** report notes:

Recommendations of internal reports (summarised below) noted.

The proposal would have a significant visual impact on the area.

There may be some overlooking or overshadowing of buildings on Castlemaine Road.

Further Information recommended including Road Safety Audit, parking, private open space provision, impact on amenities of adjoining property and redesign of scheme for retention of building

The **2nd planner's** report following FI has no objection and recommends a grant of permission subject to conditions.

3.2.2. Other Technical Reports

Conservation Officer in a report dated 10/11/21 notes:

- The Square is of special architectural, historical and cultural interest and value.
- The street is currently underutilised and in their vacant state the buildings will continue to deteriorate. The rear elevation of these plots also seriously detract from the ACA character.
- There are reservations regarding the proposed development by itself and the precedent it would set.
- The front elevations, roof height and other details which contribute to the character of the ACA should be retained. There is no objection to substantial alteration to the interior or rear.

The **2nd Conservation Officer's** report dated 04/08/21 considers the FI to be acceptable. There has been a substantial improvement in the overall approach which accords with ACA policies. Conditions detailed should permission be granted.

Housing Estates Unit in a memo dated 19/10/21 requires FI including details on the entrance, access for emergency vehicles, car parking including visitor parking, boundary treatment onto public areas and landscaping. The **2nd** report dated 27/07/21 notes that the layout is not in compliance with the requirements sets out in Recommendations for Site Development Works for Housing Areas. Conditions recommended should permission be granted.

County Archaeologist in a report dated 12/10/21 notes there are no recorded monuments in the vicinity. No mitigation is required.

Biodiversity Officer in a report dated 05/08/21 recommends conditions should permission be granted including pre-construction bat survey.

Roads and Transportation in a report dated 11/08/21 details conditions should permission be granted.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

None

4.0 **Planning History**

I am not aware of any previous planning applications on the site.

5.0 **Policy Context**

5.1. **Development Plan**

Tralee/Killarney HUB Functional Area Local Area Plan 2013-2019

The site is not specifically zoned in the Milltown LAP.

The site is within an Architectural Conservation Area.

5.2. **Natural Heritage Designations**

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The 1st Party appeal against conditions 5 and 6 can be summarised as follows:

6.1.1. Condition 5 – Restriction of houses and duplex units to 1st occupation by individual purchasers

- The condition is in direct conflict with national planning policy.
- There is no justification or apparent regard had to the need to apply such a condition.
- It will compromise the viability of the development permitted and will act as a negative precedent for further residential development within the wider town.
- Given the cost of construction and limited demand for residential dwellings in Milltown the financial incentive for the preparation of the application and construction of the permitted scheme lies wholly in the applicant's long term retention and rental of the residential apartment units.
- The applicant is essentially being instructed by the planning authority to construct the apartments and duplex units, place them on the market for 2 years duration from which no offers will result and then present this information in the hope that it is deemed sufficient to place them on the rental market.
- The lack of availability of properties for general private rental indicates a direct justification for the provision of private rental accommodation within Milltown.
- The removal of the condition will allow for the expeditious delivery of 4 no. modern residential houses to Milltown's housing market and 4 no. apartments to the rental market thus ensuring greater choice for individual purchase and a significant increase in the quantum of properties available for private rental accommodation.
- The condition which would result in the 4 no. units being vacant for 2 no. years would limit the positive effects of the development.

- The application was lodged with the planning authority 8 months prior to the publication of the Guidelines on Regulation of Commercial Institutional Investment in Housing. Had it been lodged subsequent to the guidelines the scheme would have been revised so as to ensure the elements of the scheme were clearly labelled as per the applicant's intention to sell the houses and retain the apartments for rent.

6.1.2. **Condition 6 – No part of the dwelling units to be used for provision of overnight commercial guest accommodation.**

- The condition is unwarranted.
- The wording of the condition is in conflict with the right of future occupants to offer bed and breakfast style services as is exempted pursuant to the provisions of the Planning and Development Regulations, 2011, as amended.

6.2. **Planning Authority Response**

None

6.3. **Observations**

None

7.0 **Assessment**

I am satisfied, having examined the details of the application and having visited the site, that the determination of the application by the Board, as if it has been made to it in the first instance, would not be warranted. Accordingly, I consider that it is appropriate to use the provisions of Section 139 of the Planning and Development Act 2000, as amended, and to consider the issues arising out of the disputed conditions only.

Condition 5 requires the applicant to enter into a section 47 agreement restricting the dwelling units to first occupation by individual purchasers. The agreement is to be applicable for duration of the permission except where, after 2 years from the completion of the units it is demonstrated to the satisfaction of the planning authority that it has not been possible to sell the units for use by individual purchasers and/or

to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

As the proposal is for 8 no. dwelling units comprising houses and duplex units the Guidelines on the Regulation of Commercial Institutional Investment in Housing issued in May 2021 apply with the condition as attached the same as that set out therein.

The appellant's case is that the 2 no. apartments and 2 no. duplex units in the converted building fronting onto The Square were intended to be retained for rental purposes which would allow for the overall scheme to be financially viable. It is further contended that whilst there is demand for rental properties of this size there is no market for such type units for purchase and that the condition would effectively result in the units being vacant for two years in compliance with the condition to demonstrate the lack of demand. The negative knock-on impacts of such vacancy on the town centre is also raised as a concern. The agent for the appellant also notes that the application was lodged with the planning authority prior to the issuing of the Guidelines. Were the application to have been lodged subsequent to the guidelines the application and public notice would have made reference to the apartments and duplex units being intended as build to rent.

The guidelines state that planning authorities and An Bord Pleanála in granting permission for new residential development that is not specified as being for 'build-to-rent' purposes at planning application stage, shall have regard to the need to apply the stipulated conditions, further to Sections 39(2) and 47 of the Planning and Development Act 2000 (as amended) in respect of all housing developments that include 5 or more houses and/or duplex units. Furthermore section 2 of the guidelines note that Section 28 guidelines are general in nature, each planning application for residential development will vary and requires individual assessment, based on the location, nature (including type of housing), extent and scale of the development proposed, and all relevant planning policy requirements and considerations.

In respect of this residential scheme I consider that there are material considerations that would justify a deviation from the condition as proposed. The said considerations are as follows:

- Recent residential development in Milltown has been to the south and west of the town comprising of estate type developments that have not contributed to or extended the existing streetscape. As per the provisions for Milltown as set out in the Tralee/Killarney HUB Functional Area LAP 2013-2019 it is an objective to encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites.
- The site comprises of a 3 storey building which has been vacant for a period of time and is in a deteriorating condition. It forms part of a larger scheme which would entail the opening up of a backland site in the centre of the town.
- The building to be converted fronts onto The Square which is at a focal point where the main vehicular route through the town turns right (Main Street onto Castlemaine Street). The Square is an integral element of the built environment which defines the character of the town. The buildings within The Square are in varying forms of condition with that immediately to the west in a derelict condition. It forms part of the Architectural Conservation Area.
- The centre of Milltown is characterised by a number of vacant and underutilised buildings. The proposed development would have the potential to have a positive, knock on impact on the reuse and refurbishment of other properties for residential purposes.
- The 4 no. units in the converted building are intended by the applicant to be retained for rental purposes. The applicant was lodged with the planning authority prior to the issuing of the guidelines, thus the purpose to retain the units for rental purposes was not required to be specifically referenced in the planning application and public notices.
- The applicant has provided evidence of the shortage of rental properties in Milltown and absence of demand for purchase.
- The applicant's concern that there is little demand for apartment/duplex sales in the town and the application of the provisions of the conditions the 4 no. units would remain vacant thereby exacerbating the level of vacancy in the town centre is accepted.

On the basis of the above I recommend that the condition be amended so that the requisite provisions apply to the 4 no. houses only (nos. 5, 6, 7 and 8 as delineated on the site layout plan).

Condition 6 restricts the use of any of the units for provision of overnight commercial guest accommodation. The basis for this condition is not outlined in the internal reports on file.

Article 5 of the Planning and Development Regulations, 2001, as amended, sets out the parameters to be met, including timescale, for short term letting in rent pressure zones. Short term letting in areas outside the designated rent pressure zones are not impacted by the arrangements. Milltown is currently not in a rent pressure zone.

I would concur with the agent for the applicant that the condition, without sound basis for its attachment or evidence of issues in terms of short term lettings in the town, is unwarranted. I submit that the exempted development provisions as applicable should apply and I recommend the removal of the condition.

Appropriate Assessment – Screening

Having regard to the nature and scale of the development on a fully serviced site in Milltown town centre and the separation distance to the nearest European site, 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 combinations with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend the following:

AMEND condition 5 as follows for the following reasons and considerations:

- (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts permitted house unit nos. 5 – 8 as delineated on the site layout plan received by the planning authority on the 19th day of July, 2021, to first occupation by individual purchasers i.e. those not being a

corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

REASONS AND CONSIDERATIONS

Having regard to the location, nature, extent and scale of the development proposed including type of residential units proposed, on an under-utilised and backland site within the centre of Milltown within a designated Architectural Conservation Area and to the current provisions for Milltown as set out in the Tralee/Killarney HUB Functional Area Local Area Plan 2013-2019 wherein it is an objective to encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites, it is considered that the provisions of the Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities May 2021 should not apply to the four residential units to be provided in the existing building fronting onto The Square which is to be converted.

OMIT condition 6 for the following reasons and considerations

REASONS AND CONSIDERATIONS

It is considered that there are no considerations arising in the development as permitted which would require the preclusion of the exempted development provisions as set out in the Planning and Development Regulation, 2001, as amended, as they pertain to provision of overnight commercial guest accommodation.

Pauline Fitzpatrick
Senior Planning Inspector

January, 2022