



An
Bord
Pleanála

Inspector's Report ABP 311990-21.

Development

(a) Permission to make alterations to the internal floor plan of the building including demolition of internal walls (b) permission for the construction of an extension at first floor level over the existing single storey area of the building and (c) permission to make alterations to the north elevation of the building.

Location

Sheahan's Pharmacy, 34 Main Street, Killarney, Co. Kerry, V93 XW63

Planning Authority

Kerry Co. Council

Planning Authority Reg. Ref.

21/1029

Applicant

Pharmadirect Distribution Limited

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal

Third Party

Appellants

Margaret O'Leary & Teddy Counihan

Observers

None

Date of Site Inspection

21st January 2021

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The site is located in Killarney town centre on the eastern side of Main Street. It is an L-shaped site and also addresses Bohereencaol which is a laneway running east – west between Main Street and Bohereencaol Glebe.
- 1.2. The site has a stated area of 0.015 hectares. It contains the premises of Sheahan's Pharmacy. The shop front with the associated signage addresses Main Street. It comprise a two-storey building is located between a three-storey building which contains a clothes shop at ground floor and a two-storey building which contains an antique shop at ground floor with a residential unit over the shop.
- 1.3. The site has frontage of circa 6m onto Bohereencaol. The northern elevation of the building onto Bohereencaol contains two doorways which provides access to the rear of the premises and to the bin store.

2.0 Proposed Development

- 2.1. Permission is sought for the following;
 - (a) To make alterations to the internal floor plan of the building including demolition of internal walls;
 - (b) the construction of an extension at first floor level over the existing single storey area of the building and;
 - (c) to make alterations to the north elevation of the building.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted subject to 7 no. conditions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- It was concluded in the report of the Planning Officer that the proposed extension was relatively modest in scale in the context of the town centre location. It was stated in the report that as the building is located to the north of the amenity space to the rear of the dwelling house at no. 33 Main Street it is not considered that the proposed development will have an unduly negative impact on the residential amenities of no. 33 Main Street. A grant of permission was recommended.

3.2.2. Other Technical Reports

- None received

3.3. Prescribed Bodies

- None received

3.4. Third Party Observations

- 3.4.1. The Planning Authority received one submission/observation in relation to the application. The issues raised are similar to those set out in the appeal.

4.0 Planning History

- None

5.0 Policy Context

5.1. Kerry County Development Plan 2015-2021

- 5.1.1. Chapter 6 refers to Retail Strategy

- 5.1.2. Chapter 13 refers to Development Management – Standards & Guidelines

- 5.1.3. Section 13.10 refers to Industrial and Commercial Developments

- Any industrial or commercial development shall not by way of noise, odours, pollution and traffic or in any other way, be injurious to the residential amenity of neighbouring properties.

5.2. Killarney Town Development Plan 2009 – 2015 (as extended)

5.2.1. Killarney Town Development Plan was extended by Variation 4, which was adopted in December 2018. This Variation replaces the zoning maps and many of the other maps of the original Development Plan and also addresses several other planning issues. The site is zoned as ‘Town Centre Facilities’.

5.2.2. Chapter 6 refers to Retail Development

5.2.3. Section 6.5 – Strategic Objective of the Council

- To recognise the significance of local shops in sustaining the convenience shopping of local needs and the need to protect such local retail outlets.
- To ensure that the “Town Centre Facilities” zoned area is the primary location for new retail development. Retail proposals within these areas will generally be encouraged, subject to normal Development Management Standards.

5.2.4. Policy RT-02: It is a policy of the Council:

- a. To encourage proposals for retail development in the Town Centre so to maintain the vitality, viability and identity of the town centre.

5.3. Natural Heritage Designations

5.3.1. The site is located within c.160m of Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038).

5.4. EIA Screening

5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by Ger O’Keeffe Consulting Engineers Ltd. on behalf of the appellants Margaret O’Leary & Teddy Counihan. The issues raised are as follows;

- The report of the Planning Officer stated that the proposal was a small scale project comprising the construction of an extension to the rear of an existing shop in a built up area. It was concluded in the report that having regard to the nature, scale and location of the proposed development that it was reasonable to grant permission.
- In relation to the matter of the boundary wall it was stated in the report of the Planning Officer that it is a civil matter for both parties to resolve.
- The appellants raised concern in relation to the scale, bulk and size of the proposed development which it states will be adjacent to the party random rubble masonry wall. Concern is expressed at the two-storey nature of the proposed extension.
- The report of the Planning Officer referred to the location of the extension relative to the appellant’s property no. 33 and noted that the proposed extension would be to the north of the property.
- It is submitted that the fact that the proposed development is located on the northern side of the no. 33 that it would have an impact on the lighting and day light to the rear garden. The proximity and scale of the extension along the boundary wall is the matter of concern.
- The appellants consider that access can be provided to the rear section of the property by setting back the building so that it does not impinge on their property. It is suggested that there should be a setback of the extension to provide a lightwell.
- A number of photographs of the appellant’s garden have been submitted with the appeal.

- The appellants are concerned that the proposed development will impact upon their enjoyment of their garden as the proposal would result in a small amenity area being enclosed by the proposed development.
- It is considered that a town centre commercial development should not take precedence over the retention of an existing house and garden amenity.
- It is requested that the Board refer to the matter of the proposed development not interfering with the wall separating the properties both the random rubble wall along the garden and the wall between the rear wall building/sheds.
- It is requested that the Board limit the development along the northern boundary with an appropriate set back to protect the amenity of the appellant's garden.

6.2. Applicant Response

A response to the third party appeal was submitted by MOL Consulting Engineers Ltd. on behalf of the applicant Pharmadirect Distribution Limited. The issues raised are as follows;

- They accept that the random rubble stone wall is a common boundary wall and they confirm that any development undertaken will not interfere with the stability of the wall.
- It is stated that matters relating to the stability of the common boundary wall are a civil matter.
- It is stated that the proposed development on the site is a modest development in the context of the town centre development. It is noted that the proposed development is located to the north of no. 33 Main Street.
- Any reduction in the overall width of the development by virtue of a set back would make the internal space available at first floor level most unsuitable.
- It is stated that they accept condition no. 4 of the permission granted by Kerry County Council under Reg. Ref 21/1029 which required frosted/opaque glass on the window on the southern elevation as a mitigation measure in terms of privacy.

- It is set out that the proposed development represents the only alternative to the Sheahan family to extend their family business premises at the town centre location where it has been for generations.

6.3. **Planning Authority Response**

- None received

7.0 **Assessment**

The main issues in this appeal are raised in the grounds of appeal. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Impact upon residential amenity
- Appropriate Assessment

7.1. **Impact upon residential amenity**

- 7.1.1. It is proposed to make alterations to the internal floor plan of the building including demolition of internal walls and to construct a first floor extension over the existing single storey area of the building. It is also proposed to make alterations to the north elevation of the building.
- 7.1.2. The main contention of the appellants relates to the scale of the first floor extension, the proximity to their property and the impact that it would have on the daylight which rear garden of their property would receive. They contend that the proposed development would negatively impact upon the enjoyment of their garden due to the proximity of the extension to the boundary and scale of the development. They also expressed concerns in relation to potential impacts to the boundary wall.
- 7.1.3. The proposed first floor extension would extend for 12.8m along the southern site boundary. The first floor extension has a proposed area of circa 72sq m. The appellant's property no. 33 Main Street adjoins the subject site and is situated immediately to the south. The rear garden serving no. 33 is located immediately to the south of the appeal site.

- 7.1.4. In relation to the matter of impact upon the appellant's rear garden, I would concur with the assessment of the Planning Authority that having regard to the location of the appellant's property to the south of the proposed extension I am satisfied that potential overshadowing would be very limited. While I note that the proposed extension would result a first floor wall being constructed adjacent to the appellant's garden it would extend for circa 8.2m and it would have a height of 5.5m as a flat roof is proposed to the extension. Therefore, I am satisfied that it would not result in any undue overbearing of the appellant's property.
- 7.1.5. Furthermore, in relation to the matter of residential amenity, I note that no windows are proposed to the southern elevation as indicated on Drawing No: MOL085-21-03. Therefore, the development would not result in any potential overlooking of the appellant's private amenity space. Condition no. 4 as attached by the Planning Authority referred to the requirement for obscure glazing to the proposed window to the southern elevation, I note that a first floor window is proposed to the eastern elevation to serving the office. Accordingly, I would consider it appropriate to attach a condition requiring this window be fitted with obscure glazing to protect the amenities of the area.
- 7.1.6. The appellants have requested that the proposed first floor extension be set back from their boundary. In response to this the first party have stated that any reduction in the overall width of the development provided to set back the extension would result in the internal space available at first floor level most unsuitable. I note the first party response on the matter, and I would agree that given the relatively limited scale of the proposed first floor extension that a reduction in its area would mean it would not provide a suitable space for the needs of the business.
- 7.1.7. The matter of the party boundary wall is raised in the appeal in relation to the stability of the wall. In response to the issue the first party have stated that they accept that the random rubble stone wall is a common boundary wall, and they confirm that any development undertaken will not interfere with the stability of the wall. I note that the matter of the boundary wall is a civil issue between the parties. Accordingly, I do not consider that it is necessary to attach a condition in respect of the boundary wall.

7.2. Appropriate Assessment

- 7.2.1. The site is located within 160m of two European sites, Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038), which are situated to the south, to the west and to the northwest. There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established 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 permission be granted subject to conditions for the reasons and consideration set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the town centre zoning objective for the area, to the pattern of development in the area and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable having regard to design and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 26th day of October 2021, the 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.

Reason: In the interest of clarity.

2. 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.

3. The window on the eastern elevation shall be glazed with obscure glass.

Reason: To protect the amenities of the area.

4. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

6. The developer shall pay to the planning authority a financial contribution 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. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Siobhan Carroll
Planning Inspector

17th February 2022