



An
Bord
Pleanála

Inspector's Report ABP313774-22

Development	Permission for Demolition of three commercial units and replace it with 3 commercial units at ground floor and 9 two bed apartments at first, second and third floors
Location	35, 35A and 36 Florence Road, Bray Co Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	211185
Applicant(s)	David Elliot and Frank Farrell
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party vs Conditions
Appellant(s)	David Elliot and Frank Farrell
Observer(s)	None
Date of Site Inspection	9 th September 2023
Inspector	Andrew Hersey

Contents

1.0 Site Location and Description	3
2.0 Proposed Development.....	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Submissions/Observations	4
4.0 Planning History.....	5
4.1. Subject site.....	5
5.0 Policy and Context.....	5
5.1. Development Plan - Wicklow County Development Plan 2022-2028	5
5.2. Bray Municipal District Plan 2018-2024.....	6
5.3. National Planning Framework 2040	7
5.4. RSES for the Eastern and Midland Region 2019-2029	7
5.5. Sustainable Urban Housing - Design Standards for Apartments 2021.....	7
5.6. Development Contributions: Guidelines for Planning Authorities 2023 (Department of the Environment, Community and Local Government)	7
5.7. Natural Heritage Designations	8
5.8. EIA Screening.....	8
6.0 The Appeal	8
6.1. First Party Appeal	8
6.2. Grounds of Appeal.....	8
6.3. Planning Authority Response	9
6.4. Observations	9
6.5. Further Responses.....	9
7.0 Assessment	9
7.1. Introduction.....	9
7.2. Principle	11
7.3. Visual Amenities.....	13
8.0 Recommendation.....	16
9.0 Reasons and Considerations	16
10.0 Section 48 Contribution.....	17
10.1. Contribution requirements	17

1.0 Site Location and Description

- 1.1. The proposed development is located at 35, 35A and 36 Florence Road, Bray and comprises of three existing single storey commercial buildings with 2 pitched roof and one flat roof facing towards the street.
- 1.2. To the east of the site there is a large two storey building with a red tiled façade and is occupied by Dealz a discount outlet. This building wraps around to the rear of the proposed development site.
- 1.3. To the west of the site there is a yard with a mix of buildings surrounding the same some of which are vacant.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following: Permission for
 - demolition of three existing commercial retail units and
 - proposed mixed use development over four floor levels consisting of
 - three commercial units at ground floor level,
 - nine two bedroom apartments at first, second and third floor levels,
 - connection to existing services and all associated site works

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant Permission subject to conditions.
 - 3.1.1.1. Condition 1 states that the development is for 6 apartments only
 - 3.1.1.2. Condition 4 (a) requires the applicant to reduce the building by one floor and omit three apartments.
 - 3.1.1.3. Condition 2 refers to the Section 48 Development Contribution

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (dated 16th May 2022) reflects the decision of the Planning Authority.

3.2.2. Other Technical Reports

3.2.2.1. Irish Water

- That there is infrastructure within the proposed development site which may be impacted by the proposal. Further information is required and it is recommended that a pre-connection enquiry be made to Irish Water

3.2.2.2. Bray Engineers Planning Report (9th November 2021)

- No provision for car parking and service vehicles on site
- That an existing private parking space is being removed and the council plan to remove street parking

3.2.2.3. Water & Environmental Services (4th November 2021) (

- Insufficient information to examine proposal from a surface water perspective

3.2.2.4. SEE Road Section (26th October 2021)

- No observations

3.2.2.5. Chief Fire Officer (21st October 2021)

- A Fire Safety Certificate and Disability Access Certificate is required in the event that permission is granted

3.3. Submissions/Observations

- None received

4.0 Planning History

4.1. Subject site

- Planning Reg. Ref. 21/217 in the name of David Elliot and Frank Farrell for the demolition of three existing commercial retail units and proposed mixed use development over four floor levels. Consisting of three commercial units at ground floor level, 2 x three bedroom apartments and 8 x one bedroom apartments on first, second and third floor levels, all with connections to services and associated works refused permission in part on the grounds of the scale, design, excessive plot ratio, inadequate residential amenity afforded to future residents and failure to comply with the standards as set out in Sustainable Urban Housing - Design Standards for Apartments
- Planning Reg. Ref. 20/1173 in the name of David Elliot and Frank Farrell for the demolition of two existing shop units and proposed mixed development over four floor levels consisting of one commercial unit at ground floor level and twelve x 1 bedroom apartments, all adjoining previously granted development (Ref. No. 17/1251) with connection to services and associated works refused permission in part on grounds of the scale of the development, failure to comply with the standards as set out in Sustainable Urban Housing - Design Standards for Apartments, the proximity of the proposed development to an adjacent commercial development, lack of residential amenity afforded to future occupants as a consequence of single aspect nature of apartment units

5.0 Policy and Context

5.1. Development Plan - Wicklow County Development Plan 2022-2028

- Policy HD3 All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards as set out in the Development and Design Standards document appended to this plan

- Policy HD3 New housing developments above all other criteria shall enhance and improve the residential amenity of any location, shall provide the highest standard of living for occupants and in particular shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.
- Policy HD5 - In order to make the best use of land resources and services, new residential development shall be expected to aim for the highest density indicated for lands

5.2. Bray Municipal District Plan 2018-2024

- 5.2.1. The site is located on lands zoned as 'Town Centre' in the above plan where it is the objective of the council *'to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation'*
- 5.2.2. The zoning description for the site seeks to: *'To develop and consolidate the existing town centres to improve vibrancy and vitality with the densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise town centre conservation, ensure priority for public transport where applicable, pedestrians and cyclists while minimising the impact of private car based traffic and enhance and develop the existing centres' fabric'.*
- 5.2.3. Specific Objective TC3 for the town centre seeks to promote active uses above ground floor level and promote the concept of 'living over the shop'. In this respect the objective states that *a relaxation in density, car parking, and open space standards will be considered where the development meets a very high quality of design and accommodation*

5.2.4. Specific Objective BT3 – generally a height of 4 stories will be considered appropriate in the Bray Town Centre Zone irrespective of adjoining property heights. Additional stories will be allowed in specific circumstances.

5.3. **National Planning Framework 2040**

- NPO 3a Deliver at least 40% of all new houses nationally within the built up footprint of existing settlements
- NPO 3b Deliver at least half of all these new houses in the five cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford
- NPO 35 Increase residential development in settlements through a range of measures including infill development schemes.

5.4. **RSES for the Eastern and Midland Region 2019-2029**

- RPO 4.3 Support the consolidation and re-intensification of infill/brownfield development sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs

5.5. **Sustainable Urban Housing - Design Standards for Apartments 2021**

- Sets out the most recent standards for apartment development.

5.6. **Development Contributions: Guidelines for Planning Authorities 2023 (Department of the Environment, Community and Local Government)**

- Section 2 - Key Messages: While it is expected that planning authorities will ensure that developers make an appropriate contribution towards the costs of public infrastructure and facilities, the local authority must ensure that it avoids levying development contributions that are excessively high – development contributions are ultimately designed to offset only a portion of the costs of public infrastructure and facilities

5.7. Natural Heritage Designations

- 5.7.1. The site is not located within or adjacent to any Natural Heritage Designations nor is there any hydrological link to the same

5.8. EIA Screening

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. First Party Appeal

- 6.1.1. A first party appeal prepared by Farry Town Planning Consultants Ltd on behalf of the applicants was lodged on the 9th June 2022. The appeal specifically does not question the principal of the planning authorities decision and specifically states that the appeal relates to Conditions 2 (which relates to the S48 contribution) and 4 (a) which relates to the requirement for the omission of the entire third floor which comprises of 3 apartments No. 7, 8 and 9.

6.2. Grounds of Appeal

- With respect of Condition 2 that when calculating the financial contribution the planning authority did not take into account the existing floorspace in accordance with the contribution scheme and therefore should be reduced.
- That 4 storey buildings are allowed under Policy BT3 of the Bray Municipal District Plan 2018
- That the case planners report did not raise any issues with respect of the height in the initial assessment of the application and that the fourth storey only became an issue after further information was requested and a response submitted to the council.

- The case planners statement that the height of the proposed development is almost twice that of the adjacent Dealz retail unit is irrelevant as Policy BT3 expressly allows for 4 storey developments at this location. The approach to reduce the building by 1 floor therefore contravenes this policy
- The issue with respect of the impact of the proposed development on the Holy Redeemer Church is a new issue that was raised after the response to further information was lodged. In addition, this issue was not raised in the two previous applications on the site. The appellant discounts this issue as irrelevant as other 4 storey developments have been granted permission in closer proximity to the said church (specifically refers to development granted under Planning Reg. Ref. 11630014)
- The imposition of the requirement to omit the third floor from this development will render the project unviable

6.3. **Planning Authority Response**

- None received

6.4. **Observations**

- None received

6.5. **Further Responses**

- None received

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. With respect to the appeal relating to Condition 2, Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the

terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number two only and cannot consider the proposed development de novo.

7.1.2. The appeal also seeks to omit/amend Condition No. 4 (a) which states that:

'The entire third floor shall be omitted i.e. apartment No 7, 8 and 9 and all associated corridors, stairs, lifts and other ancillary development'

7.1.3. Section 139 (1) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against the decision of the Planning Authority to grant permission where the appeal relates only to a condition or conditions that the decision provides subject to the Board being satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted

7.1.4. With respect of the above, I do not consider that it is possible to make a determination on this the condition without having to considering the proposed development de novo in the first instance. Any amendment or omission of this condition will have implications with respect of the assessment of the overall development with respect of the design, plot ratio, density etc. Additionally, any amendment or omission with respect of this condition will affect condition No. 1 of the permission which states specifically that *'The total number of apartments being permitted is 6 number'* and condition no. 2 which is also subject of this appeal and which relates to Section 48 contributions.

7.1.5. In this respect I consider in this instance that it is appropriate to assess the application *de novo*.

7.1.6. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to the relevant local development plan policies, history files and other relevant guidance documents.

7.1.7. Issues with respect of compliance with Section 28 Guidelines and in particular Sustainable Urban Housing - Design Standards for Apartments 2021 have been adequately addressed in the case planners report as have issues relating to car

parking and connection to services and therefore I do not propose to assess these issues in detail.

7.1.8. I am satisfied the substantive issues arising from the grounds of this first party appeal relate to the following matters-

- The principle of a 4 storey building at this location vis a vis density and issues relating to plot ratio
- Issues with respect of visual amenity
- Section 48 Contributions

7.2. Principle

7.2.1. The proposed development is located in Bray town centre on lands zoned as 'Town Centre in the Bray Municipal District Plan 2018. The land use zoning objective with respect of this 'Town Centre' designation is *'to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation'*

7.2.2. The proposed development which comprises of three commercial units at ground floor, 2 bed apartments and 3, 1 bed apartments at first, second and third floors complies with the above land use zoning objective

7.2.3. Specific Objective TC3 for the town centre seeks to promote active uses above ground floor level and promote the concept of 'living over the shop'. In this respect the objective states that *a relaxation in density, car parking, and open space standards will be considered where the development meets a very high quality of design and accommodation*

7.2.4. With respect of the above I note that car parking has not been proposed nor has any public open space being proposed and with regard to the same the case planner has accepted that these are not required having regard to the above specific objective. However, the relaxation of these requirements are subject to situations *where the*

development meets a very high quality of design and accommodation. The issue of design will be examined further on in this report.

- 7.2.5. Specific Objective BT3 also applies in this town centre site which states: *generally a height of 4 stories will be considered appropriate in the Bray Town Centre Zone irrespective of adjoining property heights*
- 7.2.6. I consider that this specific objective is clear and I would concur with the appeal in that there is no development plan policy which allows for deviation from this specific policy objective which I would consider generally accords with national and regional planning policy with respect of increasing densities on brownfield development sites in town centres. In light of the above, I do not agree with the Planning Authorities imposition of Condition 4(a) which sought to omit the third floor.
- 7.2.7. As stated previously, I generally concur with the case planners assessment with respect of the compliance with the standards as set out in Sustainable Urban Housing - Design Standards for Apartments 2022, his recommendation that parking is not required in this town centre location and that connection to services has been accepted.
- 7.2.8. The only issue I would have concerns about is with respect of bin storage for the commercial units which is located to the streetside elevation. Though not dimensioned the area provided for commercial bin storage appears very small. The other issue is with respect of bicycle storage which is proposed to be located with the bin storage area provided for the apartments and which is accessed from the front elevation of the building. I would not consider that this is of an adequate size having regard for the current trend for cargo bikes etc. A much larger area for cycle space is warranted having regard to the fact that the applicant does not have to provide for car parking on site.
- 7.2.9. I note that with respect of plot ratio/density provision, the development permitted with respect of the reduced number of apartments lowers the density in this town centre site. The proposed plot ratio including for all the apartments as proposed is calculated at 2.92 whereas Condition 4(a) which omits the third floor reduces the plot ratio down

to 2.3. While I would consider that the reduced plot ratio is acceptable having regard to the town centre site, I would consider higher densities should be encouraged on such brownfield sites in line with national and regional policy. With respect of the same I would consider that the fourth floor proposed is appropriate in this context

7.3. Visual Amenities

- 7.3.1. The proposed development site is located between a retail building just over 7 metres in height (Dealz) and an open yard. The building on the other side of the open yard is 3-stories in height with a flat roof roughly 9 metres in height and which features a mix of a mix of traditional sized windows including bay windows on the first floor all with a nap plaster finish. The ground floor of the said building is commercial in nature. The Dealz building on the eastern side of the site is clad in terracotta colored tile with large retailing logo's on the streetside elevation. With respect of the above there are mixed styles of buildings in the immediate context of the site.
- 7.3.2. The site is not within any conservation area. The nearest protected structure is the Holy Redeemer Church located on the main street and which faces down Florence Road. Having regard to the distance to the church from the proposed development site, I do not consider that there will be any impact as a consequence.
- 7.3.3. I refer to Specific Objective TC3 for the town centre seeks to promote active uses above ground floor level and promote the concept of 'living over the shop'. In this respect the objective states that *a relaxation in density, car parking, and open space standards will be considered where the development meets a very high quality of design and accommodation.*
- 7.3.4. As per the above objective, car parking nor public open space has been provided on the site and in this respect any development on this site must meet *a very high quality of design and accommodation.*
- 7.3.5. It is clear from the case planners report that the design of the said development is *'not high quality however is acceptable having regard to the location and pattern of development in the area'*

- 7.3.6. It is clear therefore that the case planner does not consider that development is adequate in terms of design and yet he allows it even though it is clear from specific objective TC3 that a high quality of design and accommodation is required.
- 7.3.7. I have examined the design of the current proposal and the proposals refused permission previously on the site. I would consider that the design of the current proposal is generally poor and I would consider that the proposal will have a negative impact upon the appearance of the street which is not warranted no matter the context and such a development would set a poor precedent for further poorly designed developments at this location.
- 7.3.8. With respect of the design, there is a poor solid/void relationship, the material finish nap plaster with plaster bands is dated and is generally now limited to housing developments. The side west elevation facing onto the yard is just a solid nap plaster wall with nap plaster bands as is the east side elevation. There is no coherence between the window sizes and balconies and the commercial shopfronts appear like they have been cut and pasted from another project.
- 7.3.9. It is understood that Florence Road is to undergo street improvement works in the near future which will involve the removal of car parking. It is therefore critical that private development enhances the general appearance of the street.
- 7.3.10. There is scope for a well-designed modern 4-storey building at this location with generous balconies from each apartment overlooking the future upgraded street
- 7.3.11. With respect of the above therefore I do not consider that the design of the building is acceptable and does not accord with specific objective TC3 which seeks a *very high quality of design and accommodation* and on this basis I recommend that permission be refused for the said development.

7.4. Section 48 Contribution

- 7.4.1. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where

the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied.

- 7.4.2. Condition number two requires the payment of a development contribution of €48,600 in respect of public infrastructure and facilities benefitting development within 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 Wicklow County Councils Development Contribution Scheme
- 7.4.3. The terms of applying Development Contributions is set out within the Wicklow County Council Development Contribution Scheme 2021 (hereunder referred to as WCC DCS)
- 7.4.4. The proposed development as permitted includes for six apartments and three commercial units which have a collective floorspace of 241sq.m.
- 7.4.5. €8100 is imposed per apartment unit as per the WCC DCS which gives a total €48,600 for 6 apartments In the event that 9 are permitted the total would then be €72,90
- 7.4.6. No contribution is imposed with respect of the commercial units as the case planner rationalises that 453sq.m of commercial floorspace is proposed to be demolished and therefore no contribution is required for the commercial aspect. Commercial rates of €48 per sq.m. applies generally for commercial floorspace as per the WCC DCS.
- 7.4.7. Section 4.10 of the WCC DCS allows for credit to be given for existing floorspace. This section states that *There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.*
- 7.4.8. The appellant considers that credit is not given for the existing 453sq.m. of commercial floorspace and that this would accrue a credit of €21,744 (453 x €48) and that this should be taken from the total contribution imposed by the council - €48,600. The appellant therefore asks the Board to reduce the contribution figure to €26,856 (€48,600 - €21,744)
- 7.4.9. The appellants rationale is not clear in this regard as the new commercial floorspace has not been taken into consideration in his calculations. However, I consider that credit should be given for the entirety of the existing floorspace proposed to be

demolished i.e. 453sq.m. As calculated above by the appellant this gives a credit of €21,744

7.4.10. The contribution that would result therefore a consequence of the development as currently permitted by Wicklow County Council would be;

6 residential units x €8100 = €48,600

Plus 3 x Commercial units - collective floorspace of 241sq.m. x €48/sq.m) €11,568

Less the existing commercial floorspace 453sq.m. (x €48/sq.m) €21,744

Total Contribution for development as permitted by WCC €38,424

If the Board decides to grant 9 residential units then the contribution is €62,724

7.5. Appropriate Assessment Screening

7.5.1. Having regard to the nature and scale of the proposed development, the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

I recommend that permission be refused for the following reasons:

9.0 Reasons and Considerations

1. Specific Objective TC3 of the Bray Municipal District Plan 2018-2024 seeks to promote active uses above ground floor level and promote the concept of 'living over the shop' and in this respect allows for a relaxation in density, car parking, and open space standards where the development meets a very high quality of design and accommodation. The proposed development comprises of 3 commercial units at ground floor level with 9 apartments set out over 3 floors takes advantage of this objective and in doing so does not provide for any car parking or public open space. However, the objective also requires that the development meets a very high standard of design and accommodation. It is considered that the design of the proposed development, by reason of the irregular pattern of windows, doors, shopfronts and material finishes is not of a

sufficiently high standard to ensure compliance with this objective and would set an undesirable precedent for future development along Florence Road. Having regard to the same and having regard to the inadequate safe and covered cycle parking area and by reason of the lack of bin storage for the proposed commercial units, the proposed development would result in an incongruous form of development in the area, would seriously injure the visual amenities of the area, would be contrary to the specific objective TC3 as set out in the Bray Municipal District Plan 2018-2024 in relation to town centre development and would, therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Section 48 Contribution

10.1. Contribution requirements

- 10.1.1. In the event that the Board decides to grant permission for the said development in accordance with the decision of Wicklow County Council for 6 residential units then I recommend that condition No. 2 be amended so as to impose a contribution of €38,424.00.
- 10.1.2. In the event that the Board decides to grant permission for the said development and disregards Condition 4 (a) which refers to the omission of 3 residential units and 9 units in total are granted permission then I recommend that condition No. 2 be amended so as to impose a contribution of €62,724.00.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way

Andrew Hersey
Planning Inspector

27th October 2023