



An  
Bord  
Pleanála

## Inspector's Report ABP 315132-22

<b>Development</b>	Retain (a) additional area of external walkway (5.6m <sup>2</sup> ) within the building, (b) 2 no. first floor windows on the eastern elevation, (c) 1 no. ground floor window on the rear southern elevation, to use as a café/delicatessen restaurant, on the ground floor with guest accommodation on the first and second floor.
<b>Location</b>	75-79 Main Street, Castleisland. Co. Kerry.
<b>Planning Authority</b>	Kerry Co. Council.
<b>Planning Authority Reg. Ref.</b>	22/669.
<b>Applicant(s)</b>	Gerard Reidy.
<b>Type of Application</b>	Permission to retain.
<b>Planning Authority Decision</b>	To grant permission.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Breda Crowley.
<b>Date of Inspection</b>	October 12 <sup>th</sup> , 2023.

## 1.0 Site Location and Description

- 1.1. The site is located at 75-79 Main Street, Castleisland. Co Kerry. It comprises a rectangular shaped site that was originally part of a larger site similar to adjacent properties. The site accommodates a three-storey mid terrace building with a two-storey return and various extensions to the rear. There are a number of dilapidated outbuildings close to the rear boundary. Vehicular access to the rear of the site is off Old Chapel Lane via Park Place to the east. The building on site is undergoing renovations and repair and is currently vacant.
- 1.2. The site lies in the middle of the commercial heart of the town and is adjoined by commercial property on both sides.

## 2.0 Proposed Development

- 2.1. The proposal as described in the public notices submitted with the application seeks the retention of the following:

- Additional area of external walkway (5.6m<sup>2</sup>) within the building,
- 2 no. first floor windows on the side eastern elevation,
- 1 no. ground floor window on the rear southern elevation,

to use as a café/delicatessen, restaurant on the ground floor with guest accommodation on the first and second floor.

## 3.0 Further Information

- 3.1. Further information was requested on 16/8/22 on matters relating to the impacts of rainwater discharge, extractor fans and security risks to adjacent properties. Other matters related to loss of privacy associated with the retention of the windows to bedroom No. 4 and the storage room in the side elevation.
- 3.2. The response of 9/9/22 included revised drawings showing details of flat roof drainage, location of extract ducting which would involve the removal of 2 no. windows in the rear elevation. It was confirmed that the rear wall would be over 2.8m high and would not cause any additional security risk. The windows in bedroom no. 4

and the storage room would be fixed shut with no openable sections and fitted with obscure glass to prevent overlooking.

## 4.0 Submission

- 4.1. The issues raised in the submission are similar to those raised in the appeal relating to loss of privacy, security risk associated with flat roof, rainwater discharge, lack of light to ground floor window, ventilation and location of extractor fans.

## 5.0 Planning Authority Decision

### 5.1. Decision

The planning authority decided to grant permission for the retention of the development subject to 4 no. conditions.

**Condition No 2:** The two windows to the east elevation to be retained shall be fixed shut and fitted with obscure glass.

### 5.2. Planning Authority Reports

#### 5.2.1. Planning Reports

The **Planning Officer's** report of 15/8/22 notes that the proposed development is consistent with the 'Mixed Use-Built Up Area' zoning of the site. The proposal would not have a significant negative visual impact given the nature and location of the proposed development and surrounding land uses. There are existing connections to surface water and public sewers systems.

Having regard to the existing development on the site and the distance from any European sites, there is no likely potential for significant effects. Having regard to the nature scale and location of the proposal, there is no requirement for EIA or screening.

The report of 19/10/22 concluded that the response to further information addressed the issues raised by the planning authority.

### 5.2.2. Other Technical Reports

**Environmental Health Service** – No Objection.

**Assistant Chief Fire Officer** – No objection.

**Kerry National Roads Design Office** – No observations to make on the application.

**County Archaeologist** – No recorded monuments listed in the vicinity of the site. No mitigation required.

## 6.0 Planning History

**20/1224** – Permission granted for the amalgamation and change of use of existing retail, commercial and residential accommodation to use as a café/delicatessen, restaurant on the ground floor with guest accommodation on first and second floor; alter and renovate existing structure on the site to facilitate same; alter existing shopfront; elevational changes and ancillary site services.

## 7.0 Policy and Context

### 7.1. Development Plan

The operative development plan is the Castleisland Local Area Plan (Killarney District Local Area Plan 2018-2024). The site is zoned Mixed Use (Town Centre).

### 7.2. Natural Heritage Designations

There are no European sites close to the site.

### 7.3. EIA Screening

7.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 8.0 The Appeal

### 8.1. Grounds of Appeal

8.2. The grounds of appeal are summarised below:

- The appellant is the owner of the adjoining property to the east which operates as a pharmacy.
- Having being initially granted planning permission for redevelopment works, the applicant has undertaken works that are unauthorised and impact on the operation of appellant's business and disrupt her amenities.
- In response to issues regarding privacy associated with the 2 No. first floor windows on the eastern elevation, the applicant proposes obscure glazing and fixed shut windows. These windows face directly towards appellant's property and are less than 4m from the boundary.
- Regarding the window on bedroom No 4 the provision of a fixed shut window for a habitable room would raise building control and fire safety concerns. The window is not yet fitted and the open gap could be closed up. A window could be placed in the southern elevation which would not require obscure glazing or to be fixed shut and would provide more natural light to the room. Such an alternative would satisfactorily address the concerns of the appellant.
- With regard to the window for the storage room the question arises as to why a window of this nature is required for a storage room. It results in an unnecessary window in close proximity and overlooking appellant's property and it is difficult to see what purpose it would serve being fixed shut with obscure glazing. It would be possible to provide for alternative sources of natural lighting.
- Amending the windows to incorporate a vertical emphasis would reduce the glazed area but it is appellant's strongly held contention that they should be removed in their entirety as the condition imposed is unworkable and there are readily available alternatives to address the issue to satisfy all parties.
- There is a window from appellant's property facing into the 'external walkway', which the developer has boxed off externally and left an external area of

approximately 0.9m x 0.9m at roof level. The window is the only window in the room and is used by the pharmacy in preparing medicines and record keeping and is now significantly overshadowed.

- Boxing off of the window means that it cannot be used as a means of escape in the event of a fire. The pharmacy contains flammable liquids and it is unknown what types of fire rating the materials used in the construction works will have.
- The appellant has concerns that she will not be able to open this window to let in natural air in the future due to the possible build-up of odours from the unsealed manhole directly outside this window. She also has concerns that the area would be used for refuse bins or a smoking area for staff with potential odour nuisance for the pharmacy and customers. There are also concerns regarding privacy as the room is used for consultation purposes, wound dressings etc.
- Noise and odour nuisance from proposed fans on residential amenity. Concerns that the extractor fans will be placed on the flat roof in close proximity to upstairs bedroom windows. There is an absence of certainty in relation to the final details of ventilation proposals which have not been addressed in the application.
- Security risk associated with flat roof.

### 8.3. Applicant Response

- No loss of privacy will occur to neighbouring properties as the windows to be retained will have no opening sections and will be fitted with obscure glass.
- It is far more practical to have natural instead of artificial light in the storage room which will have ample storage space using storage racking.
- The vertical or horizontal nature of the window does not change the fact that it will be not result in a loss of privacy to neighbouring properties.
- The courtyard area will not be used to store bins nor will it be used as a smoking area. There is ample space at the rear for such facilities. The small courtyard was incorporated around the neighbouring window to achieve light

and ventilation. There were already three sides to this area and one wall was added to the south to form the courtyard. The adjacent area has a flat roof which is low in profile and limits the potential for loss of light.

- The photographs submitted by the appellant show the window adjacent to the courtyard serving the pharmacy. While it is stated that the boxing off this window means that it cannot be used as a means of escape in the event of fire, it is noted that the window as it exists cannot be used due to the height of the cill above floor level, the size of the openable section and there appears to be metal bars installed to prevent egress. Furthermore, this neighbouring property does not have a right of way to access the applicant's property.
- Adequate ventilation will be employed throughout the facility to ensure neighbouring properties are not adversely affected. Details were approved by Kerry Co. Council.
- The retention of the additional area will not cause any additional security risk. The rear wall of the extension will be over 2.8m high. There was always a single storey extension in this location, which provided access via a flat roof. The neighbouring pharmacy is far more vulnerable at the rear of their own property with a shared access with the neighbouring Centra shop and to the mart area to the rear.
- It was assumed during the retention application that the existing wall between the building and the laneway was structurally sound. It was subsequently discovered that it would need to be demolished and rebuilt. A decision was made at the time to partly occupy the area of the external walkway to allow a better kitchen layout. There is no significant impact on amenities, and it is not accepted that the retention of the window in question would significantly affect the health and well being of pharmacy staff. There is no significant detrimental impact on the loss of daylight, ventilation or privacy and the appellant has not provided any evidence to support her case.
- The additional walkway area is in applicant's ownership and the area was previously a dark and damp walkway, which offered no benefit to either party. There was one small window on the neighbouring boundary wall and the small courtyard area was built around this window to ensure natural light and

ventilation can be achieved to the existing window, whilst not impacting their right to privacy.

- The building will be built in compliance with current building standards and the retained development will not be contrary to proper planning and sustainable development.

#### **8.4. Planning Authority Response**

No response to the grounds of appeal were submitted by the planning authority.

### **9.0 Assessment**

#### **9.1. Introduction**

9.1.1. Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

9.1.2. I consider that the main issues that arise for determination by the Board in relation to this appeal relate to the following:

- Impacts on neighbouring property.
- Appropriate Assessment

#### **9.2. Impacts on neighbouring property**

9.2.1. The appellant owns the adjoining property which operates as a pharmacy with residential accommodation. It is contended that the retention of the development as proposed will impact on the amenities of her property and impede her ability to operate her business. It is stated that these matters not been satisfactorily addressed in the further information submitted.

9.2.2. I inspected both the application site and appellant's property. Each element proposed for retention as part of the application is considered below.

9.2.3. The retention of the additional area of external walkway within the building footprint results in the window in the side elevation at the rear of the pharmacy being completely encircled and boxed-in. This results in a significant loss of light to this window, which impacts on the amenity of the property and its future development



potential. I would therefore consider that this element of the development should not be permitted.

- 9.2.4. The windows in the east elevation proposed for retention would serve a storage room and a bedroom. The window serving the store faces towards a bathroom window in appellant's property which is fitted with obscure glass. The window in the bedroom faces what is essentially a blank wall in this location. There are 2 no. windows at this level which are closer to the rear of the building and which are fitted with opaque glass.
- 9.2.5. The appellant has suggested that the issues regarding ventilation and loss of privacy associated with the bedroom window could be addressed by the provision of a window in the rear (southern) elevation. I would point out to the Board that this is not a solution as a blank wall is proposed in this location with a void created over the function room creating no opportunity for outdoor ventilation.
- 9.2.6. I consider that any potential for overlooking and loss of privacy from both windows would be adequately addressed by applicant's proposal to fit and permanently maintain the windows with obscure glass with no openable sections. Subject to these requirements, the size or shape of the opes is immaterial in my opinion. I do note that a new dormer style window is proposed in the west elevation of the bedroom which would address the issues raised regarding ventilation of this room.
- 9.2.7. The window to be retained in the rear southern elevation is located on the ground floor and faces towards the rear of the appeal site and has no impact whatsoever on appellant's property.
- 9.2.8. Other matters raised in the appeal relate to odour, fire and security risk. Details of proposed extract ducting to address potential odour issues was submitted in response to further information and was considered acceptable by the planning authority. Its installation would require the removal of 2 no. windows serving a stairwell at first and second floor levels which would be adequately lit by remaining windows.
- 9.2.9. The appellant is dissatisfied with the arrangements on the basis of the location of the extract vent below the eaves level of her property and its proximity to her windows. I also note that no issues were raised by the Environmental Health Officer. While this is a town centre location where restaurants and café's are an acceptable use and

essential component of its vibrancy, I note that no information is provided on the efficacy of the system to prevent odour nuisance. Should the Board be minded to grant permission for the retention of the development, I recommend that a condition be attached requiring details of the system to be agreed with the planning authority.

9.2.10. I note that details of the application were referred to the Fire Authority, who raised no objection to the development proposed for retention. I did observe that the window ope at the rear of the pharmacy is fitted internally with steel bars which currently prevents its use as a means of escape in the event of a fire.

9.2.11. The retention of the covered walkway could arguably facilitate increased access to appellant's property by closing the gap that currently exists between the two properties. However, as noted by the applicant there is a flat roof in this location, and I note that the appellants has taken measures (steel railing) to prevent unauthorised access to her premises at first floor level.

### 9.3. **Appropriate Assessment Screening**

9.4. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site, it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

## 10.0 **Conclusion**

10.1.1. I have considered the matters raised in the appeal and I consider that subject to the conditions set out below, the retention of the development would not significantly detract from the amenities of neighbouring property.

## 11.0 **Recommendation**

11.1. On the basis of the above assessment, I recommend that permission for the development be granted for the reasons and considerations set out below.

## 12.0 Reasons and Considerations

12.1. Having regard to the planning history relating to the site and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development to be retained would not significantly detract from the amenities of adjoining property, and would, therefore, be in accordance with the proper planning and sustainable development of the area

## 13.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 9<sup>th</sup> day of September 2022, 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The additional area of external walkway proposed to be retained within the building shall be omitted from the development to details to be submitted to and agreed in writing with the planning authority within one month of the date of this Order.</p> <p><b>Reason:</b> In order to protect the amenities of adjoining property.</p>
3.	<p>The windows in the eastern elevation proposed to be retained serving the storage area and bedroom no 4 shall be permanently fitted with obscure glazing with no openable section.</p> <p><b>Reason:</b> In order to protect the amenity of neighbouring property.</p>
4.	<p>The developer shall control odour emissions from the premises in accordance with details to be agreed in writing with the planning authority</p>

	<p>within one month of the date of this Order. Drawings and full details of the extraction system including arrangements for the maintenance of the system shall be submitted.</p> <p><b>Reason:</b> In the interests of public health and to protect the amenities of the area.</p>
5.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p><b>Reason:</b> In the interest of public health.</p>

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.

---

Breda Gannon  
 Planning Inspector

23rd October 2023