



An
Bord
Pleanála

Inspector's Report ABP315714-23

Development	Demolish ruins of existing cottage and construct a café with apartment overhead and associated works and services
Location	Fenit Without, Fenit, Tralee, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/929
Applicant(s)	Patrick Moriarty
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Christy and Kathleen Lynch
Observer(s)	None
Date of Site Inspection	3 rd May 2023
Inspector	Ann Bogan

1.0 Site Location and Description

- 1.1. The site is located in Fenit village which is 10km from Tralee. The village has a population of approximately 600, as well as a busy working port and a popular Blue Flag beach and a leisure marina. The site is located close to the terminus of the Tralee to Fenit Greenway, with Fenit Commercial Pier close by to the south-east. Fenit beach stretches westwards in front of the site, with scenic views south over Tralee Bay and the Slieve Mish mountains. Public toilets, a car park and a playground are located to the east. There is a dwellinghouse to the north (the appellant), approximately 27m from the rear boundary of the site.
- 1.2. The site has no vehicular access but has a pedestrian entrance from the footpath/ramp to the beach which runs in front of the site, separating it from the beach. There is also an entrance from the adjoining public pedestrianised area to the east. A derelict cottage, referred to as the old Boathouse Cottage is located on the site. It has a floor area of 92sq m, set back approximately 8 m from the front boundary.

2.0 Proposed Development

- 2.1. The proposed development involves the demolition of the existing single storey cottage and associated outbuildings and the construction of a two-storey building, 190sq m in area. The proposed building is of 'contemporary NZEB pavilion design', with masonry walls, a glazed front and 'curved' low-pitch metal clad roof. The main elements are:
- Ground floor - a café/ice cream parlour, 89sq m in area, with a food preparation area, a servery and a small amount of seating
 - Paved terrace to the front overlooking the beach with seating, covered by a glazed canopy, with glass screens to front and sides
 - Covered service yard to the rear.
 - First floor - 2 bed apartment, with a balcony bordered by glass screens overlooking the beach; with windows in the east and west elevations but not in

the rear (north) elevation; accessed via an entrance on the eastern side of the building.

- Existing low wall, railing and will be retained along the western boundary.
- Existing pedestrian access from beach to be closed and the side entrance widened by removal of part of the existing stone wall along the eastern side, bounding the adjoining public paved area. A further pedestrian entrance proposed near apartment entrance, to the north of the public toilet block.

2.2. Unsolicited further information received 21st October 2022, containing a response to observations – no changes proposed.

2.3. Further information on foot of FI request received 13th December 2022 including:

- Bat Impact Assessment Report which found no evidence of bat activity and considered the site to have negligible roost potential
- Water Services Report proposing alternative method of surface water disposal
- Response to request for car parking providing justification for why car parking not required. Revised layout shows provision for cycle parking in the covered shed to the rear of the building.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 8 conditions. Conditions 5 and 6 required entrances to be agreed prior to construction; condition 8 required a 'pre-construction bat survey' to be carried out prior to demolition of the existing structure.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report of 26th October 2022: The Planning Officer noted the poor condition of the existing cottage and welcomed the proposal to regenerate the site. Two third party observations were received raising issues including design and visual impact of

the structure, overlooking of the beach, impact on Blue Flag status of beach, increased demands on water and drainage services, and flood risk.

Following a preliminary examination, it was concluded, having regard to the nature, scale and location of the project that EIA was not required. The Planning Officer concluded that the proposed development was '*acceptable in terms of design and would bring a statement structure to the area*'. However, further information was requested in relation to matters including water services, surface water disposal, Bat Impact Report, car parking and pedestrian access, a Construction Environmental Management Plan and waste disposal.

Planning Report of 22nd January 2023: The response to further information was considered acceptable. Grant of permission was recommended, subject to conditions. The report of the Planning Officer, as amended by the Senior Executive Engineer, formed the basis of the Planning Authority Decision.

3.2.2. Other Technical Reports

Environment Dept

Report requesting further information in relation to provision of a Construction Environmental Management Plan, disposal of construction wastes, surface water disposal and connection to foul sewer.

Biodiversity Officer

- An Appropriate Assessment Screening Report was carried out and concluded no likely potential for significant effects on Natura 2000 sites and concluded no requirement to carry out Appropriate Assessment.
- Requested Bat Impact Assessment Report on the existing buildings, which found no evidence of bats, condition re pre-demolition bat survey recommended.

3.2.3. Prescribed Bodies

Irish Water: No objection subject to standard requirements

4.0 Planning History

None

5.0 Policy and Context

5.1. Development Plan

Kerry County Development Plan 2022-2028 categorises Fenit as a District Town which are: 'towns that serve a rural hinterland as service centres'. It has an expanding population with a target in the Core Strategy for an additional 102 houses, subject to planned and approved improvements to the foul sewerage system.

Relevant polices include the following:

KCDP 10-44 Facilitate and support the sustainable development of tourism infrastructure and recreational developments at appropriate locations along greenway routes and trailheads subject to normal planning conditions.

KCDP 10-49 Support and facilitate the maintenance, enhancement and promotion of Blue Flag beaches, and seek to identify any additional locations which may satisfy the criteria for Blue Flag status

Public Rights of Way: The path running in front of the site is listed as a public right of way in the County Development Plan: 'Vol 3 Appendices ROW 8b: The path from the carpark before the bridge to the pier in Fenit westwards along the coast'.

KCDP 14-70 Protect all existing Public Rights of Way (including those not listed in this plan) and ensure that development does not impinge on these routes.

Views and Prospects: Views east and west from Fenit pier are identified for protection in Maps D, Volume 4 of the Plan.

KCDP 11-79 Preserve the views and prospects as defined on Maps contained in Volume 4.

KCDP 11-81 Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

5.2. Tralee Municipal District Local Area Plan 2018-2022

Section 3.4 Fenit

Page 73 'Vision The vision for Fenit is to ensure that it that it develops sustainably as a compact attractive location for residents and tourists alike, while promoting and preserving its character as a seaside village and working port'

Page 74 'Water Infrastructure: The existing foul and surface water sewer system is at capacity. The existing system is a combined foul and storm drainage system and measures to deal with storm waters are required. The waste water treatment plan consists of primary settlement only and is overloaded. Additional land has been acquired along with the necessary planning approvals for a new wastewater treatment plant for the settlement. Kerry County Council will engage with Irish Water regarding the upgrading of the existing infrastructure'.

FT-GO-01 Protect the natural environment of the village from developments of an inappropriate nature and scale given that these attributes contribute greatly to the distinctive character of the village.

FT-GO-02 Ensure that dwellings shall be for permanent residential use only and shall not be used for holiday home accommodation.

FT-GO-08 Amendment No.1 Facilitate the delivery of the Fenit Village Design Masterplan to ensure coordinated and sustainable development of the area.

FT-TE-02 Make provision for the environmentally sustainable expansion of the village centre, retail, service uses, and amenity space while protecting features of biodiversity and cultural importance.

Zoning: The site is zoned 'Mixed Use - Built Up Area'

Page 3 Objective for mixed use areas: 'It is policy to primarily provide for mixed uses and any other uses appropriate to the town centre in areas zoned mixed use.

Proposed developments should improve the vitality and viability of the town centre and shall meet the needs of the town. Residential development will also be encouraged particularly in mixed use developments'.

Fenit Village Design Masterplan 2022: adopted into the Tralee Municipal District Local Area Plan via Amendment No 1 in July 2022.

States on Page 12: 'The opportunity is there to consolidate and enhance existing facilities for people who visit the beach and pier. A new market will arise for pedestrians and cyclists using the Tralee to Fenit Greenway on completion. A

number of greenways have been established with great success in recent years, including Westport to Achill and Dungarvan and it is clear that new facilities will be required to meet the needs of walkers and cyclists’.

The Masterplan contains a design strategy for the seafront and greenway terminus area which includes cycle and car parking provision, a pedestrianised plaza with ramped access to the beach, and a prototype design for replacement of the existing toilet block with a new beach facility of contemporary design, containing showers, toilets and lockers and a lifeguard base. The indicative location for the facility is adjoining the eastern boundary of the subject site.

5.3. Natural Heritage Designations

- Tralee Bay and Maherees Peninsula West to Clohane cSAC/pNHA;
- Akeragh, Banna, and Barrow Harbour cSAC/pNHA
- Tralee Bay Complex SPA

5.4. EIA Screening

Having regard to the nature and scale of the proposed development, comprising of demolition of an existing cottage and construction of a small café with apartment overhead, in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

- Concerned that the development will have a negative visual impact on the immediate area
- Impact on the amenities and services provided for the public; in particular concerned that there are no toilets provided as part of the proposed

development and that the new public facilities proposed in the Fenit Masterplan will be used to serve this private business.

- Impact on the status of the Beach as a Blue Flag Beach and the use of the beach by members of the public
- Appellants are not against development of the site, 'understand that the existing cottage is an eyesore' but feel the site should be redeveloped in a considered and sustainable manner, which in their opinion is not achieved by the proposed development
- There is no current precedence for a development of this type in this location and although there are changes proposed in the Fenit Masterplan they have not yet been built.

6.2. Applicant Response

Summary of applicant's response to the grounds of appeal:

- **Visual Impact:** the site is in the centre of Fenit village adjacent to the sailing club, Outdoor Activities Centre, Pier, Port and marina facilities, playground, car park and the terminus of the Greenway. A compact café building on a brownfield site is an entirely appropriate form of development and will serve local community, visitors and the public. Refers to extract from Fenit Masterplan page 12 (see Section 5.2 above) identifying the opportunity for facilities to meet the needs of walkers and cyclists using the Greenway.
- **Fenit beach and Blue Flag Status and Natural Amenity:** Fenit is an Urban Blue Flag Beach close to the centre of the village and amenities, rather than a 'wild beach'. The café will complement the Blue Flag Beach amenity and provide a sheltered facility with views of the bay for swimmers and other beach users as well as the wider community and will be a welcome amenity in the area.
- **Café Facilities:** The café is a small take-away facility, adjacent to existing public toilet facilities which are due to be upgraded and are designed to serve the beach, village greenway and visitor demand. '*Given the limitations of the*

Fenit Wastewater Treatment system it was considered appropriate at this time to limit to a takeway facility only, with appropriate staff toilet facilities’.

- **Building Form:** The modern low-profile design allows the proposed building to blend into the area and is considered to be appropriate and sensitive. Points out that the village setting is dominated by the Tralee Bay Sailing Clubhouse on the nearby headland which overlooks the beach, port and proposed café. Refers to the Kerry County Council plans for a modern Lifeguard and Toilet Structure adjacent to the café.
- Contends two storey buildings are the norm in the area, including the appellants house located behind the café site and that the development of the site is not constrained because the previous building was single storey. Indicates that the building will not directly overlook the adjoining playground, and only overlooks the beach and greenway terminus.
- Concludes the beach-side café is an ideal proposal for this location given its strategic positioning at the terminus of the Greenway, the pier, beach village and walkway and is supported by Kerry County Council objectives for the area.

6.3. **Planning Authority Response**

- None

6.4. **Observations**

- None

6.5. **Further Responses**

None

7.0 Assessment

Having examined the application details and all other documentation on file, including the appeal and observations and inspection of the site, and having regard to relevant Development Plan and Local Area Plan objectives, I consider that the main issues on this appeal are as follows:

- Principle of the development
- Visual Impact and design
- Amenity of the Blue Flag beach
- Impact on local public services
- Bat Impact Assessment
- Appropriate Assessment

7.1. Principal of the development

The area is zoned in the Municipal District Local Area Plan 2018-2022 as 'Mixed Use- Built up area'. The proposed café and apartment uses are compatible with the mixed-use zoning objectives applying to this part of the village which supports uses which will add to the vitality and viability of the village centre. The proposed café will serve as an amenity for users of the greenway, village and beach and is in line with the Local area Plan and Fenit Masterplan objectives which includes 'provision for the environmentally sustainable expansion of the village centre' (Objective FT-TE-02)

7.2. Visual Impact and building form

- 7.2.1. The proposed structure is of contemporary design and will be located at a prominent position at the eastern end of Fenit beach. It will be taller than the modest existing single storey cottage. (5.5m at the eaves and 9m at the highest point of the roof) and located closer to the front of the site. However, in the context of the existing two storey buildings in the village, including those in an elevated position to the east, and the proposed contemporary design of the public facility on the adjacent site, I consider the proposed development will have a largely positive impact on the surrounding built-up area, in place of the derelict cottage and that it would not contravene Objective FT-GO-01 which seeks 'to protect the natural environment of the village from developments of an inappropriate nature and scale...'

- 7.2.2. The building will not be in the direct line of view of the County Development Plan protected views westwards from the pier (referred to in 5.1 above) and would not have a negative impact on those views.
- 7.2.3. The shallow pitch of the roof will reduce the visual impact of the building height when viewed from the beach which slopes to the south. It will be a more dominant structure when viewed from the west, although this will be tempered by the use of dark grey painted render on the side elevation and the existing 2 metre high hedge on the boundary.
- 7.2.4. The proposed building will be at least 25m from the residences to the north (including the appellant) and will be partially screened by existing vegetation. I am satisfied that it would not be seriously injurious to residential or visual amenities. Overall, I consider that the contemporary design and form of the proposed building will have a positive impact on the visual amenity of the village.

7.3. Amenity of the Blue Flag Beach

- 7.3.1. Kerry County Development Plan contains an objective (KCDP 10-49) to support and facilitate the maintenance, enhancement and promotion of Blue Flag beaches and it is important that development enhances rather than retracts from the amenity of such beaches. The proposed development will not be accessed directly from the beach but from the adjoining pedestrianised area and a condition is recommended to ensure the existing entrance from the beach is removed and replaced with a suitably designed wall and finish. The existing ramp access to the beach will be retained, ensuring public access to the beach, and the Development Plan listed right of way will not be affected by the development.
- 7.3.2. Initial proposals were for surface water to discharge from the site directly to the beach but revised proposals submitted provide for storage on site and disposal to an existing public storm drain nearby. I consider these to be acceptable in terms of protecting the environmental quality of the area.
- 7.3.3. In my opinion the café will be an asset to the area and to those using the beach for leisure and water activities. While users of the café and occupants of the apartment will overlook the beach, it is not considered that this will negatively impact on use of the Blue Flag Beach.

7.4. Local Public Services

- 7.4.1. Irish Water have raised no objection to the connection of the proposed development to public water and sewerage services, taking into account the existing structure and limited scale of the development. Concern was raised by the appellant in relation to the lack of toilets to serve café customers and the impact this would have on use of public services.
- 7.4.2. The applicant in the response to the appeal says the facility will be a takeaway only. I note that this was not indicated in the documents submitted with the application or the description of the development and seems to conflict with the drawings which indicate some indoor and outdoor seating. It seems likely that there will be a combination of customers consuming their purchases on the premises and others taking food elsewhere to consume. (I note that the application as submitted does not include a proposal for 'sale of hot food for consumption off the premises' and any future proposal for same would have to be the subject of a separate application).
- 7.4.3. Considering the limited scale of the proposed café, and the proximity of the public toilet facilities, which cater for visitors to the area as well as locals, I believe the facilities provided with proposed café are acceptable and the development is unlikely to put significant extra pressure on public facilities
- 7.4.4. No car parking is provided to serve the development, although some cycle parking is proposed in the covered shed to the rear of the building. Public car and cycle parking is available nearby and I consider this to be adequate to serve the proposed development. A condition is recommended to ensure that the levels and location of pedestrian entrances to the proposed development are properly integrated with the adjoining public area.

7.5. Bat Impact Assessment

I note the contents of the applicant's bat roost assessment report and the report of the planning authority's Bio diversity Officer. I consider that the materials submitted are adequate to assess the issue of on-site bat activity and, having observed the on-site conditions (including absence of significant tree coverage and the exposed nature of the site), I conclude that the site is not likely to be significant in terms of bat populations and I am satisfied that the proposed development is acceptable in this context.

7.6. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites and a lack of ecological or hydrological connection between the development and any European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

I recommend that planning permission be granted subject to the conditions below.

9.0 **Reasons and Considerations**

Having regard to the mixed use zoning of the site, the design, nature and scale of the proposed development, the pattern of development in the area and the provisions of the Kerry County Council Development Plan 2022-2028 and the Tralee Municipal District Local Area Plan 2018-24 (incorporating the Fenit Village Design Masterplan 2022), it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual or residential amenities or the environment of Fenit Village, the beach or the surrounding area and would not impact negatively on public services in the area and therefore would 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 the further plans and particulars submitted on the 13th day of December 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
----	---

	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interests of clarity</p>
2.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>The existing stone wall on the eastern boundary of the site shall be retained apart from proposed pedestrian access shown on the drawing 2207-FI-02 "a" submitted on 13th December 2022. The applicant shall submit details of the access to the Planning Authority for agreement prior to commencement of development.</p> <p>Reason: To ensure the proposed development is integrated with the adjoining public area in the interests of visual amenity and public safety.</p>
4.	<p>The existing entrance from the beach shall be closed off as proposed. The applicant shall submit details of the proposed boundary treatment for the agreement of the Planning Authority, prior to commencement of development.</p> <p>Reason: In the interests of clarity and to protect the amenities of the walkway and beach.</p>
5.	<p>Construction shall be carried out in accordance with a finalised Construction Environmental Management Plan (CEMP) which shall be submitted and agreed with the Planning Authority prior to commencement of development.</p> <p>Reason: In the interests of protection of the environment and public safety</p>
6.	<p>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</p>

<p>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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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.</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.

Ann Bogan
Planning Inspector

10th May 2023