



An  
Bord  
Pleanála

## Inspector's Report ABP 318800-24

<b>Development</b>	Demolish existing structure and construct single storey apartment with connections to services.
<b>Location</b>	Puckeens, Doon Road, Ballybunion. Co Kerry.
<b>Planning Authority</b>	Kerry Co. Council.
<b>Planning Authority Reg. Ref.</b>	231074.
<b>Applicant(s)</b>	Michael & Deirdre Mulvihill.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Stephen Mulvihill.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	April 18 <sup>th</sup> , 2024.
<b>Inspector</b>	Breda Gannon.

## 1.0 Site Location and Description

- 1.1. The site is located off Doon Road, Ballybunion. Co Kerry. It is positioned on the east side of a cul-de-sac laneway that also serves the rear of dwellings fronting onto Doon Road on its east side, and more recent residential properties on the west side. The laneway which is c 3.5m wide in the vicinity of the site has been recessed along sections on the west side to facilitate access to residential properties.
- 1.2. The site is occupied by a partially constructed structure with a flat roof which has been erected tight up to the edge of the laneway. It is adjoined on each side by the single storey sheds within the rear gardens of neighbouring properties. There is a single-storey dwelling house further south which has car parking to the rear.
- 1.3. The area is predominantly residential in character with St Joseph's primary and St Joseph's Secondary school located further to the north.

## 2.0 Proposed Development

- 2.1. The proposal is to demolish the existing structure on the site and to build a new single-storey apartment (40.9m<sup>2</sup>). The apartment would accommodate a bedroom, bathroom and kitchen/living area. The structure would be recessed back from the front boundary of the site. A single car parking space would be provided in the set back area parallel to the roadway. The proposed development would be set back by 1.6m and 1m respectively from the northern and southern site boundaries. Private open space (48m<sup>2</sup>) would be provided to the rear. The apartment would be provided with a pitched slated roof and the external walls would have a plaster finish.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission for the development subject to 10. No conditions, which contains the following conditions of note:

**Condition No 3:** The demolition of the unauthorised structure on site shall take place within 3 months of receipt of this decision.

**Condition No 5:** The proposed development shall be in accordance with the design drawing received on 27/10/2023. Roof shall be covered with slates which shall be either black, dark grey or blue-black. The colour of the ridge tile shall match the colour of the roof. All external finishes shall be neutral in colour, tone and texture.

**Condition No 10:** Controls on the hours of construction.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officers report 19/12/23 noted that a flat roofed building has been constructed on the site proximate to the boundaries. Previous applications for the retention of the structure have been refused. It is accepted that demolition of the structure is required and should be carried out within 3 months of this decision.

The current proposal accords with pre-planning advice and is considered substantially in accordance with the Apartment Guidelines 2022. It is considered that the separation distance from site boundaries will address previous issues regarding overbearing impacts on adjoining properties to the east and south. The visual impact is considered generally acceptable having regard to existing developments in the vicinity. The proposal will not negatively impact on the residential amenities of adjoining properties.

One onsite car parking space is proposed which is considered acceptable. The development will be connected to the existing public water main and foul sewer.

Having regard to the nature and limited scale of the development, the requirement for submission of an EIAR and carrying out of EIA may be set aside at preliminary stage. Having regard to the nature and scape of the proposal, there is no likely potential for significant effects on Natura 2000 sites. AA is not therefore required.

#### **3.2.2. Other Technical Reports**

None

### **3.3. Prescribed Bodies**

No submissions.

### 3.4. Third Party Observations

Third party submissions were received from 2 no. parties who raised the following issues:

- This is an established neighbourhood and construction working times should be severely restricted.
- Front western gable of the proposed structure should be set back from cul-de-sac roadway to allow all traffic movements to be accommodated within the site and remove the need to turn further down the access road or for encroachment onto other properties.
- Width of car parking space is not wide enough and will cause a traffic hazard and impede access to emergency vehicles to the north.
- Right of way to Mr Fitzgerald's property will be impacted.
- The construction of the unauthorised structure on the site resulted in damage to adjacent properties. Potential damage arising from proposed development has not been addressed.
- Non-compliance with Building Regulations.
- Level of detail and specifications are poor. No details of materials and finishes and no contextual elevations showing impacts on adjacent structures.
- Undesirable precedent.

### 4.0 Planning History

**03/3802:** Permission granted to demolish existing chalet and outline permission granted for a single-storey dwelling house.

**18/421:** Permission refused for demolition of existing derelict holiday chalet and for the construction of a two-storey house and all associated site works on the grounds that the proposal would not integrate satisfactorily into the surrounding area and would seriously injure the residential amenities and depreciate the value of properties in the vicinity. The planning authority was not satisfied that a justification for a holiday home on the site had been demonstrated.

**20/1045:** A decision by Kerry Co Council to grant permission for retention of the structure on site for use as a holiday home was overturned by An Bord Pleanála (ABP 309977-21) for the following reason;

*Having regard to the restricted nature of the site and the established pattern of development in the surrounding neighbourhood, it is considered that the development proposed to be retained by reason of its scale, form and design would constitute overdevelopment of a limited site area, would constitute substandard development, and would give rise to a poor standard of residential amenity for future occupants. The development proposed for retention would be overbearing in terms of its impact on established adjacent dwellings and would be visually obtrusive on the streetscape. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.*

**21/1465:** Permission refused for the retention of the structure on the site for use as a holiday home and for permission to reduce the size of the structure on the grounds that it would constitute substandard development, give rise to a poor standard of residential amenity and set an undesirable precedent for similar development. It was considered that it would result in overbearing impacts on established dwellings and would be seriously injurious to the amenities of the area.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the **Kerry County Development Plan 2022-2028** which was adopted on July 4<sup>th</sup>, 2022 and came into effect on 15<sup>th</sup> August, 2022.

Standards for apartment developments are set out in Section 1.5.5. of Volume 6.

Ballybunion is identified as a District Town in the Listowel Municipal District LAP 2020-2026. The site lies within the development boundary of the town and is zoned 'R2: Existing Residential'.

### 5.2. Natural Heritage Designations

- The Lower River Shannon SAC lies c150m to the west.

- The River Shannon and River Fergus Estuaries SPA lies c 6km to the north.

### **5.3. EIA Screening**

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity of the site, 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 at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal area as follows:

The suggested parking space poses a potential traffic hazard due its inadequate width of 2.2m. This limited space is insufficient for ensuring safety, particularly with the west wall obstructing the opening of car doors on one side. On the other side, two car doors would open directly onto the road outside the designated boundary, creating a hazardous situation. Approving such as setup would establish an undesirable precedent and compromise public safety by increasing the risk of traffic hazards.

### **6.2. Applicant Response**

No response.

### **6.3. Planning Authority Response**

No response.

### **6.4. Observations**

None.

## **7.0 Assessment**

### **7.1. Introduction**

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

- Principle of the development.
- Impacts on the amenities of the area.
- Ownership.
- Other matters.
- Appropriate Assessment.

### **7.2. Principle of the development**

- 7.2.1. Having regard to the previous refusal of permission for the retention of the structure on the site, I accept that its demolition is acceptable.
- 7.2.2. Having regard to the location of the proposed apartment in an area zoned for residential purposes in the LAP, I consider the proposed development is acceptable in principle in this location subject to normal good planning practice and compliance with the provisions of the development plan and relevant standards.

### **7.3. Impacts on the amenities of the area**

- 7.3.1. The previous proposal considered by the Board on this site sought the retention of the partially constructed structure which remains on the site. The current proposal seeks its demolition and the construction of a single-storey apartment in its place. The building would have a reduced floor area and would be set back from the shed on the southern site boundary. The flat roof would be replaced by a pitched roof with an increase in overall height from 2.7m to 4m. No windows are proposed in the southern elevation and with the exception of the kitchen/living area all other rooms would be single aspect.
- 7.3.2. In terms of the impact of the development on the amenities of the area, I accept that the replacement of the flat roof with a pitched structure improves its overall presentation within the streetscape. The windows are all at ground floor level which combined with the existing shed along the northern boundary minimises the potential

for overlooking and loss of privacy to adjacent property. The proposed structure would be set back from the site boundaries to the north and south, which coupled with its reduced floor area would help to ameliorate overbearing impacts.

- 7.3.3. My concern regarding the proposal relates to the standard of residential amenity it would provide for future occupants. The backland site, which is very restricted in area (0.01 ha), limits the size of the development that can be accommodated and satisfy relevant standards. The proposal is not in compliance with the apartment design standards set out in the Standards for New Apartments Guidelines for Planning Authorities (2022) in terms of the minimum floor area for a one-bedroom apartment, the aggregate floor area for kitchen/living areas and the minimum floor to ceiling height. The proximity of the windows to the site boundaries, with shadowing effects from adjacent property, limits the potential for sunlight/daylight penetration creating a poor-quality living environment. Whilst the open space provided to the rear (49sq.m) is adequate, its amenity would also be subject to overshadowing arising from its limited and enclosed nature.
- 7.3.4. The proposed car parking space is proposed at the narrowest section of the cul de sac and its restricted nature would require cumbersome manoeuvres to ensure that a vehicle can be accommodated. While this could be addressed by moving the proposed apartment further back into the site, it would reduce the quantum of open space provided, further diminishing the level of amenity provided.
- 7.3.5. Having regard to the restricted nature of the site and the scale and design of the proposed apartment, which does not satisfy the minimum standards set out in the Standards for New Apartments Guidelines for Planning Authorities (2022) and the lack of suitable car parking space within the site, I consider that the proposed development would result in overdevelopment of the site which would seriously impact on the amenity afforded to future occupants and set a precedent for similar type development in the future. The proposed development would seriously impact on the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

#### 7.4. **Ownership**

- 7.5. There is reference in the submissions to the impedance of a right of way to Mr Fitzgerald's property. From a perusal of the planning history on the site, the house



on the east side of the appeal site appears to be Mr Fitzgerald's property. I was unable to gain access to the appeal site at the time of inspection, but I note that the planning officer refers to a gate located on the boundary with the dwelling house to the east. The house to the east which fronts on to Doon Road appears to be unoccupied.

- 7.5.1. The appeal site was clearly part of the original curtilage of this house and it is unclear when it was divided. The applicants have declared themselves owners of the site and although this matter was raised in the previous appeal, details of ownership in the form of land registry documentation has not been submitted, and the right of way has not been identified.
- 7.5.2. The Development Management Guidelines for Planning Authorities (DOEHLG, 2007) clarify that the planning system is not designed as a mechanism for resolving disputes about title to land or premises, or rights over land, which are ultimately matters for resolution in the Courts. The applicants have made no response to the grounds of appeal to provide clarity on this matter.
- 7.5.3. Should the Board consider that a grant of permission is appropriate, I recommend that it rely on the provisions of Section 34(13) of the Planning and Development Act, 2000 which states that 'a person shall not be entitled solely by reason of a permission under this section to carry out the development'.

#### **7.6. Other matters**

- 7.6.1. The submissions to the planning authority raised issues regarding damage to property arising from the proximity of the existing structure to adjoining property. The existing structure is built up tight against the southern boundary. The demolition of the existing structure as proposed and the erection of the new apartment with increased separation distances would resolve this issue.
- 7.6.2. The developer has a duty of care to protect adjoining property and exercise due diligence that damage is not done. Furthermore, the granting of permission does not diminish the rights of the property owner. The issues raised are considered to be civil matters which are beyond the scope of the appeal.

#### **7.7. Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, its location within a built up area with connections to public infrastructure and the distance from any European site it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. On the basis of the above assessment, I recommend that permission be refused for the proposed development for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the restricted nature of the site, it is considered that the proposed development by reason of its scale and design, which does not meet the minimum design standards set out in the Standards for New Apartments Guidelines for Planning Authorities (2022), and the lack of a suitable car parking space within the site, it is considered that the proposed development would result in overdevelopment of the site which would seriously impact on the amenity afforded to future occupants and set a precedent for similar type development in the future. It is considered that the proposed development would seriously impact on the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

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Breda Gannon  
Planning Inspector

April 26<sup>th</sup> 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP 318800-24		
<b>Proposed Development Summary</b>	Demolish existing structure and construct single storey apartment with connections to services.		
<b>Development Address</b>	Puckeens, Doon Road, Ballybunion. Co Kerry.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	Yes
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>		NO	Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_