



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319507-24

|                                     |  |
|-------------------------------------|--|
| <b>Development</b>                  | Redevelopment of premises to contain bar, external toilets, 1 no. apartment, access stairwell and all associated site works. |
| <b>Location</b>                     | Main Street, Dingle, County Kerry  |
| <b>Planning Authority</b>           | Kerry County Council   |
| <b>Planning Authority Reg. Ref.</b> | 24/60046   |
| <b>Applicant(s)</b>                 | Ruskin Concepts Ltd  |
| <b>Type of Application</b>          | Planning Permission  |
| <b>Planning Authority Decision</b>  | Refusal to Grant   |
| <b>Type of Appeal</b>               | First Party  |
| <b>Appellant(s)</b>                 | Ruskin Concepts Ltd  |
| <b>Observer(s)</b>                  | Brian and Maura McKenna  |
| <b>Date of Site Inspection</b>      | 6 <sup>th</sup> February 2025  |
| <b>Inspector</b>                    | Gary Farrelly  |

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.01 hectares and is located within the town of Dingle, County Kerry. The property in question is a two-storey mid-terraced building which fronts Main Street. The submitted drawings illustrate that the ground floor of the property currently comprises of a storage area and a disused external bar to the rear with living accommodation on the first floor. Internal access is currently provided to the living accommodation from the ground floor. The second floor comprises of an attic loft. The lands to the rear of the property are currently being used as a beer garden associated with An Droichead Beag (ADB) bar, which is located on the corner of Main Street and Spa Road.
- 1.2. The subject site is located within the Dingle Architectural Conservation Area (ACA) as designated under the Corca Dhuibhne Electoral Area Local Area Plan 2021-2027. The subject property is not listed on the Record of Protected Structures nor is it included in the national inventory of architectural heritage (NIAH) survey.

## 2.0 Proposed Development

- 2.1. Permission is sought to develop a bar on the ground floor of the premises. The existing external bar to the rear will be repurposed into toilets and a stairwell which will provide access to a proposed 2-bedroom apartment on the first and second floors of the building. The gross floor area of the proposed works measure 285sqm.
- 2.2. It is proposed to connect to the existing public water mains and public sewer network. Surface water is to be treated via the public sewer/drain.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority (PA) decided to refuse to grant permission, by Order dated 21<sup>st</sup> March 2024, for the following reasons:

1. *It is considered that the proposed development would result in substandard residential development which would seriously injure the residential amenities of the occupants of the proposed apartment and of property in the vicinity by*

*reason of inadequate access to apartment, lack of on-site private amenity space and on-site storage space. The proposed development would not comply with the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2023, as amended, and would therefore, be contrary to the proper planning and sustainable development of the area.*

- 2. The proposal would comprise the extension and alteration of an unauthorised structure namely the disused bar area to the rear of the property and would also constitute development reliant on unauthorised works in the vicinity, namely the unauthorised beer garden presently serving the An Droichead Beag Bar. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

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

#### Planning Report

There is 1 no. area planner (AP) report on file which assessed the proposed development in terms of its principle, traffic and access, effluent disposal, surface water disposal, residential amenity and visual impact. A stage 2 Appropriate Assessment (AA) was not considered required as it was considered that the development would not likely have a significant effect on any European site. It was also considered that the development did not require Environmental Impact Assessment (EIA) screening or EIA. The AP recommended refusal of the application for two reasons which was endorsed by the Senior Executive Engineer.

#### Other Technical Reports

Fire Officer (report dated 07/02/2024): There was no objection to the application subject to a fire safety certificate and disability access certificate.

County Archaeologist (report dated 07/02/2024): There was no objection subject to a condition for all ground disturbance to be monitored by a qualified archaeologist.

### **3.3. Prescribed Bodies**

None received according to planning file.

### 3.4. Third Party Observations

There were 2 no. observations submitted on the application which raised a number of concerns in terms of, inter alia, the intensification of the Droichead Beag pub, noise and anti-social behaviour issues, the impact on protected structures and the unauthorised use of a beer garden.

## 4.0 Relevant Planning History

### PA Ref. 21/1301 (subject site)

Permission was sought by Ruskin Concepts Ltd to retain a beer garden and external bar and service yard and store and to develop the premises fronting onto Main Street for use as café on the ground floor with staff toilets and storage on the first and second floors. The application was withdrawn by the applicant prior to any decision by the PA.

### PA ref. 19/718 (ADB bar)

Permission was granted to Ruskin Concepts Ltd to retain an as constructed premises known as An Droichead Beag and to construct a sound attenuation wall above the ground floor smoking area.

### PA Ref. 14/103 / ABP Ref. 243362 (subject site)

Retention Permission was sought to retain a fire escape door to the front elevation on Lower Main Street. Permission was refused by the PA and this decision was upheld by the Board after a first-party appeal.

### ABP reason for refusal of fire door

- 1. The development for which retention is sought is located within an area designated in the Dingle Functional Area Local Area Plan 2012-2018 as a proposed Architectural Conservation Area, and has involved alterations to the elevation, and is in connection with modifications to the interior of the subject building. It is considered that, in the absence of specific proposals for the subject building, which would necessitate a fire exit and storage building, the proposed items for which retention is sought represent piecemeal alterations and development of an important building within the proposed Architectural Conservation Area of Dingle Town, which would contravene objectives UD-2*

*and BH-3 of the Local Area Plan, and would seriously injure the visual amenities of the area. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.*

## **5.0 Policy Context**

### **5.1. Kerry County Development Plan 2022-2028**

#### Volume 1, Written Statement

It is an objective of the Council to:

KCDP 4-2 Facilitate and support the sustainable development of towns and villages of sufficient scale and quality to be drivers of growth, investment, and prosperity.

KCDP 4-29 Support the re-use of existing vacant buildings within town/village centres for various uses including co-working facilities.

KCDP 4-34 Encourage residential, social and employment uses in existing under-utilised or vacant building stock as a mechanism to combat vacancy in town centres.

KCDP 4-36 Promote and encourage the refurbishment and reuse of the upper floors of retail/commercial premises for residential purposes in town and village centres.

KCDP 4-37 Facilitate a flexible approach in relation to development proposals for residential accommodation in the upper floors of retail/commercial premises based on high-quality design that ensures minimum floor areas, storage space and natural light.

KCDP 4-38 Require that a separate and distinctive point of entry with an identifiable address be provided as part of any proposals for residential development in the upper floors of retail/commercial premises.

KCDP 4-41 Facilitate a mix of compatible uses that will contribute to an enhanced provision of a range of town centre uses and to consolidate the retail core of towns, including a mix of day and night-time uses.

#### Volume 6, Appendix 1 Development Management Standards and Guidelines

- Section 1.5.5 Apartment Standards

All planning applications for apartments are required to demonstrate compliance with Sustainable Urban Housing: Design Standards for New Apartments, Guidelines 2020 and any updates thereof.

## **5.2. Corca Dhuibhne Electoral Area Local Area Plan 2021-2027**

The subject site is zoned 'M2 Town Centre' where the objective is to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses.

A residential unit is considered open to consideration within 'M2 Town Centre' as per the indicative zoning matrix of Volume 6, Appendix 2 of the KCDP. A public house use is not listed within the indicative zoning matrix. However, section 1.3.7 of Appendix 2 states that proposed land-uses which are not listed will be considered on a case-by-case basis having regard to the proper planning and sustainable development of the area and compliance with the relevant policies and objectives, standards and requirements as set out in this Plan, guidelines issued in accordance with Section 28 of the Planning and Development Act, 2000 (as amended) and guidance issued by other government bodies/sections.

It is an objective of the Council to:

D-TC-4 Encourage and incentivise the use of upper floors in the town centre for commercial or residential use.

D-RES-1 Facilitate the development of residential units on vacant, derelict and infill sites.

D-UF-4 Improve the appearance, overall condition and encourage return to use of derelict and vacant buildings.

D-ACA-3 Preserve the town's architectural heritage and encourage development that is designed in a manner that is in keeping with the scale, character and pattern of the existing built fabric and urban form. New developments must be designed to a high architectural standard and must take cognisance of local design features and materials.

### 5.3. National Policy

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

#### National Policy Objective 16

Target the reversal of rural decline in the core of small towns and villages through sustainable targeted measures that address vacant premises and deliver sustainable reuse and regeneration outcomes.

- Climate Action Plan 2024

This promotes extensive retrofitting of existing premises and housing stock and the prioritisation of brownfield and compact development.

- Town Centre First, A Policy Approach for Irish Towns (February 2022)

### 5.4. National Guidelines

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (July 2023)

- Planning authorities are requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and ‘over the shop’ type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements.

### 5.5. Natural Heritage Designations

The subject site is not located within any designated site. The nearest designated site is Mount Brandon Special Area of Conservation (SAC) (Site Code 000375) which is located approximately 750 metres north of the subject site. This is also designated as

a proposed Natural Heritage Area (pNHA). Dingle Peninsula Special Protection Area (SPA) (Site Code 004153) is also located approximately 2km south of the subject site.

## **5.6. Environmental Impact Assessment (EIA) Screening**

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. I refer the Board to Appendix 1 of the report in this regard.

## **6.0 The Appeal**

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

A first-party appeal was lodged to the Board on 15<sup>th</sup> April 2024. The grounds of appeal are summarised as follows:

- It is requested that the Board overturns the refusal decision of Kerry County Council.
- The premises would be a daytime café bar catering more for morning and afternoon drinks, teas and coffees. The premises would remain open at night but with a quieter environment to that of An Droicead Beag (ADB). This is a standalone application which is completely independent of ADB.
- Dingle predominantly relies on tourism and visitors to the town for its business and the economy of the town is linked with Irish music and the Irish language.
- The site is zoned town centre and is located at the edge of the town centre in an area synonymous with music and entertainment. The Main Street/Spa Road corner is a very busy weekend gathering place and the proposed bar will have little or no impact in terms of noise or disturbance on the neighbourhood. A map is provided showing the level of activity in the area in terms of music bars, takeaways, restaurants and a taxi rank.
- It is proposed to return a vacant, semi-derelict building to viable use in accordance with the town renewal strategies as set out in objective 16 of the



National Planning Framework and objectives KCDP 4-2, 4-3, 4-24, 4-29, 4-31 and 4-36 of the Kerry County Development Plan.

- The upper floors were traditionally over the shop accommodation and therefore there is no change of use proposed. Bringing these floors back into residential use is supported by the Development Plan. Due to this historical use, it is questioned how the proposed apartment could have any injurious impact on the residential amenities of the property in the vicinity.
- Exemptions from normal standards in terms of private open space, parking and unit size standards are allowed for under Section 1.5.7.2 (Volume 6) of the Development Plan and this has been ignored by the planning authority.
- The reality of how the apartment will operate is that the applicants will use it to accommodate some staff members, who will work in the Phelan's/ADB complex and they will access the accommodation in whatever way is convenient, and depending on whether the bars are open or not. The PA has ignored the exemption provided for over-the-shop living as per Section 1.5.7.2 of Volume 6 of the CDP.
- The apartment is not substandard and is almost 100sqm over two floors incorporating two bedrooms. This is above the minimum requirement of 63sqm specified in the Section 28 Design Standards. There is adequate ceiling heights of 2.4 metres and a revised floor plan has been provided showing 3sqm storage space under the stairs.
- There are 3 no. possible accesses to the apartment; through the bar with stairs rising from the bar, a new front door onto Main Street or access from the rear. Bar access would be unsatisfactory and a new entrance from Main Street has been discounted under application ref. 14/103. Access from the rear is the only logical way of dealing with objective KCDP 4-38.
- There is clear access over the ground owned and controlled by the applicant and continues all the way to Spa Road. This pathway will afford a perfectly safe outdoor access to the apartment. The apartment can be allotted an Eircode and distinctive address and hold a post box at the entry gate.

- The PA did not take into account the active land management matters contained within Chapter of the CDP.
- The structure to the rear intended to contain toilets and the access stairs was in existence when the applicant purchased the proposed over 15 years ago and there was no reason to include a retention element in the proposal consequently. This structure closed as a bar as ref. 21/1301 was withdrawn as it was not covered by the liquor/bar licence of ADB. The structure is currently not in use, however, the structure has always existed and is historically part of Phelan's.
- The retention element within 21/1301 concerned the retention of the use of the structure, not the retention of the building. This was not raised by the PA under application ref. 21/1301 which had reached further information stage before it was withdrawn. It is proposed to substantially remove this structure and replace it with a part two storey structure.
- The PA could have requested further information and sought to have the application changed to include a retention element. To include this as a reason for refusal was simply perverse and did not adhere to the principle of fairness.
- The PA's assertion that the beer garden is unauthorised is questionable. Application ref. 19/718 permitted part of the beer garden. The Covid-19 emergency legislation allowed for the sale and consumption of alcohol in outdoor seating areas and this legislation has not been revoked. It is also fully licenced and has a fire safety certificate.
- The development is not reliant on unauthorised works as the premises could operate without the existence of the ADB beer garden. Therefore, the suggestion that the proposal relies on unauthorised development is incorrect.
- If the application is refused, the busy atmosphere which prevails in the area at night will not change. There are many sources of noise in the area and not solely from ADB. No technical evaluation of noise has been referred to by the objectors.
- The application site does not impact any protected structures.

## **6.2. Planning Authority Response**

The PA did not issue a response to the grounds of appeal.

## **6.3. Observations**

An observation was received from Brian and Maura McKenna on 8<sup>th</sup> May 2024. The issues raised within this observation is summarised as follows:

- It is requested that the Board upholds the refusal decision of Kerry County Council.
- There has been noise generated from the site under the same management both from amplified systems and persons entering and exiting the late-night premises over the past 20 years.
- The access to the proposed apartment is questionable and it is also questioned why no space of the beer garden is reallocated as amenity space.
- The unauthorised uses associated with application ref. 21/1301 have not been dealt with and therefore are still unauthorised. The PA consider that these unauthorised elements are reliant directly with the proposals of the subject application.

## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local, regional and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of the Development
- Residential Amenity
- Unauthorised Development

### **Principle of the Development**

7.2. Having regard to the 'M2 Town Centre' zoning under the Corca Dhuibhne Electoral Area Local Area Plan 2021-2027 (LAP), I consider that the proposed use of the building as a public house on the ground floor and 2-bedroom apartment on the first and second floors to be in accordance with the objective of the zoning.

7.3. Moreover, the building represents a vacant building within a prominent location on the Main Street of Dingle and, therefore, such bringing back into use of this building is supported by National Policy Objective 16 of the National Planning Framework (NPF), objectives 4-29 and 4-34 of the Kerry County Development Plan 2022-2028 (CDP) and objective D-UF-4 of the LAP. Furthermore, the proposed use of the upper floors of the building for residential purposes is in accordance with objectives 4-36 and 4-41 of the CDP and objectives D-TC-4 and D-RES-1 of the LAP.

7.4. Therefore, having regard to the zoning of the site and the aforementioned objectives within the NPF, CDP and LAP, I consider that the proposed development is acceptable in principle.

### **Residential Amenity**

7.5. The PA's first reason for refusal related to concerns that the proposed development was substandard that would seriously injure both (a) the residential amenity of the occupants of the apartment and (b) the residential amenity of property in the vicinity, due to inadequate access to the apartment, lack of on-site private amenity space and on-site storage space.

#### Amenity of property in the vicinity

- 7.6. I note the concerns from the observer regarding noise from the site in terms of music and late night gathering. Having visited the site, I noted that it was located within a central part of the town and I noted that there are a number of late night bars within the vicinity of the site, as illustrated in the applicant's submitted 'neighbourhood map'.
- 7.7. Having regard to the 'M2 Town Centre' zoning of the site and the nature of uses within the vicinity of the site, I would consider that such use of the ground floor of the building as a public house to be complimentary to the area and I have no significant concerns with its impact on amenity of property in the vicinity. Furthermore, I consider that the use of the upper floors of the building as residential would not seriously injure neighbouring amenity.

#### Amenity of occupier of apartment

- 7.8. The Board should note that the applicant has stated in the grounds of appeal that "*the reality of how the apartment will operate is that the applicants will use it to accommodate some staff members who work in Phelans or the ADB complex*". I consider that this does not prohibit the use of it by external occupiers, e.g. such as a family. I also note that the title of the application does not state that the apartment use would be ancillary to the public house.
- 7.9. With this in mind, I have serious concerns with the proposed access arrangement to the proposed apartment which I consider to be seriously substandard. Any intended occupier would be required to access the residence by traversing a beer garden or via the internal ground floor of the proposed public house. It is my view that this would be an unacceptable arrangement that would be seriously injurious to the residential amenity of such occupant. Therefore, it is my view that the PA's reason for refusal should be upheld in this regard.
- 7.10. Whilst I acknowledge application PA ref. 14/103 / ABP ref. 243362, as referenced by the applicant, the Board should note that this fire door fronting Main Street was refused retention permission by the Board due to the piecemeal nature of the works and in the absence of a specific proposal to the building.
- 7.11. With regards to the PA's concerns over the absence of private amenity space, I note that Section 1.5.5 of the Development Management Standards of the Kerry County

Development Plan 2022-2028 (Volume 6, Appendix 2) states that all proposed apartments will be required to demonstrate compliance with the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (DSNA Guidelines). The Board should note that paragraph 3.39 of the DSNA Guidelines states that for building refurbishment schemes on sites of any size, such requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.

- 7.12. Therefore, having regard to the nature of the development comprising of a building refurbishment scheme which will provide a 2-bedroom apartment of approximately 100sqm in floor area, which is a floor area substantially above the 63sqm minimum standard, and to its location within the town centre of Dingle in proximity to a number of amenity areas, it is my view that such requirement can be relaxed in full.
- 7.13. With regards to the PA's concerns over the absence of storage space, I note that the applicant has now provided a storage area of 3sqm on the ground floor under the stairwell. Whilst this does not meet the 5sqm minimum requirement as set out in the DSNA Guidelines, having regard to the refurbishment nature of the development, I consider that such provision to be acceptable.
- 7.14. Additionally, I note that one of the bedrooms of the proposed apartment would be overlooking an external beer garden, and I have concerns that this would result in an adverse impact on the amenity of the occupier in terms of noise. However, the Board should note that this was not raised as a reason for refusal by the PA and having regard to the other substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

### **Unauthorised Development**

- 7.15. The PA's second reason for refusal related to concerns over the extension and alteration of a disused bar area, which it considered to be unauthorised, and the access to the apartment via the beer garden, which it also considered unauthorised. As I have already determined above the access arrangements to be substandard, I do not consider it necessary to pursue this matter and in any case the matter of enforcement falls under the jurisdiction of the PA.

## 8.0 Appropriate Assessment (AA) Screening

- 8.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 750 metres south of Mount Brandon SAC (Site Code 000375) and approximately 2km north of Dingle Peninsula SPA (Site Code 004153).
- 8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site, including any ex-situ effects. The reason for this determination is as follows:
- To the scale and nature of the development.
  - To the location of the proposed development within a built-up urban area and to the built up nature of the surrounding area.
  - To the treatment of wastewater and surface water via the public mains.
  - To the distance from the nearest European sites regarding any other potential ecological pathways and intervening lands.
  - Taking into account the screening determination by the PA.
- 8.3. I consider that the development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is, therefore, not required. No measures intended to avoid or reduce harmful effects on European sites have been taken into account in reaching this determination.

## 9.0 Recommendation

I recommend to the Board that permission should be **Refused** for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. Having regard to the proposed access arrangements associated with the proposed apartment, which would require any future occupier to traverse the ground floor of the public house and/or outdoor beer garden, it is considered that the proposed development would result in a substandard residential unit which would seriously injure the residential amenity of any future occupier. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.
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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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Gary Farrelly  
Planning Inspector

11<sup>th</sup> February 2025



## Appendix 1: EIA Pre-Screening

|  |  |  |                            |   |
|--|--|--|----------------------------|---|
| <b>An Bord Pleanála<br/>Case Reference</b>   | ABP-319507-24  |  |                            |   |
| <b>Proposed Development<br/>Summary</b>  | Redevelopment of premises to contain bar, external toilets, 1 no. apartment and associated works |  |                            |   |
| <b>Development Address</b>   | Main Street, Dingle, County Kerry  |  |                            |   |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings) |  | <b>Yes</b>   | <b>X</b>                   |   |
|  |  | <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)?</b>  |  |  |                            |   |
| <del>Yes</del>   |  |  | Proceed to Q.3             |   |
| <b>No</b>  | <b>X</b>   |  | No further action required |   |
| <b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>  |  |  |                            |   |
| <del>Yes</del>   |  |  |                            | EIA Mandatory<br>EIAR required            |
| <del>No</del>  |  |  |                            | Proceed to Q.4                            |
| <b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>   |  |  |                            |   |
| <del>Yes</del>   |  |  |                            | Preliminary examination required (Form 2) |
| <b>4. Has Schedule 7A information been submitted?</b>  |  |  |                            |   |
| <del>No</del>  |  | Pre-screening determination conclusion remains as above (Q1 to Q4) |                            |   |
| <del>Yes</del>   |  | Screening Determination required                                   |                            |   |