



An
Bord
Pleanála

Board Direction
BD-005648-20
ABP-306096-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24th April 2020.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

1. Having regard to the location of the site which is zoned Town Centre Existing Developed/Residential Area, and to the northern part of the site to the rear of St. Mary's Terrace which is designated as a Housing Protection Area, to the distinctive character and pattern of development of this established residential area, which is characterised by narrow laneways which separate the terraced houses from their rear gardens, and to the objectives of the Killarney Town Development Plan 2009-2015, (as extended), to resist the subdivision and development of such residential sites and to preserve their distinctive character, it is considered that, the proposed development of a new industrial unit with associated car parking on this restricted site comprising the rear gardens of several terraced houses, would result in a congested layout, and would constitute overdevelopment of the site and contribute to piecemeal development of the area. The proposed development would, therefore, conflict with the provisions of the Town Development Plan, would create an undesirable precedent which would compromise any future comprehensive planning of the lands to the rear of St. Mary's Terrace, would seriously injure the amenities of

the area, and would be contrary to the proper planning and sustainable development of the area.

2. The proposed industrial unit and associated enclosed car parking area would result in the separation and loss of amenity space associated with the terraced houses fronting St. Mary's Terrace and would introduce a commercial use of the space which would be likely to give rise to noise and disturbance and in a loss of privacy and outlook. The proposed development would, therefore, seriously injure the residential amenity of these properties and would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the designation of Nos. 3 and 5 St. Mary's Terrace as Protected Structures, it is considered that the construction of a large industrial unit in the rear garden of No. 3 and directly adjoining the garden of No. 5 St. Mary's Terrace, by reason of its excessive scale, height, mass and bulk and use of materials, together with the change of use of the remainder of the garden area to a commercial car park enclosed by a fence, would permanently separate the Protected Structures from their associated attendant grounds, would adversely affect the character and setting of the Protected Structures and would be contrary to Policy BH-04 of the Killarney Town Development Plan 2009 (as extended).
4. Adequate car parking spaces, loading and turning spaces have not been provided within the curtilage of the existing Enterprise Centre. The proposed development, notwithstanding the proposed car parking area in the northern part of the site, would therefore result in haphazard parking within the estate and in on-street parking on the adjoining streets which would give rise to conflict between pedestrians and vehicles and result in congestion on the adjoining roads, both of which would endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Note 1: While the proposed minor extensions to the existing units would be generally acceptable in principle, the Board considered that, having regard to the lack of clarity in relation to the proposed new vehicular entrance from the existing Enterprise Centre onto the proposed Killarney Inner Link Road, the lack of clarity regarding car parking provision for the existing units in the centre resulting from the implementation of this Link Road and new entrance, and the lack of clarity regarding the proposed uses of the expanded units, it was considered appropriate to refuse the entire development, rather than making a decision to grant permission for the minor extensions and refuse permission for the industrial unit and associated car parking.

Note 2: The Board concurred with the Inspector that the imposition of condition number 5 of the planning authority's decision was problematic, particularly because the application was specifically for an industrial unit. However, the Board did not agree with the Inspector in relation to condition number 11 of the planning authority's decision, and considered that the imposition of this condition, requiring the ceding of land, rather than its acquisition by the local authority by agreement or through the statutory provisions for compulsory purchase, was *ultra vires* the powers of the planning authority and (as noted in the Development Management Guidelines) is unacceptable in a planning decision.

[Secretariat – please issue a copy of this Direction, with the Board Order, to the planning authority and to the other parties.]

Board Member

Date: 27th April 2020

Philip Jones