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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 19/435**

**Appeal** by the Ballydribbeen Residents Association of Ballydribbeen Community House, 59 Doirín Alainn, Killarney, County Kerry against the decision made on the 20<sup>th</sup> day of June, 2019 by Kerry County Council to grant subject to conditions a permission to Thermohouse Limited care of MMOS Consulting Engineers Limited of Lane Business Park, Monahan Road, Cork in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** Construction of 12 number two bedroom and 6 number one bedroom apartments in one three storey block and 4 number three bedroom terraced townhouses in 1 block of 4, all with associated site works to replace the 14 number one bedroom cottage flats permitted under planning register reference number 15/765 at Derreen, Killarney, County Kerry.

**Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the planning history of the site, to the location of the site within an established housing area in close proximity to Killarney Town Centre, which is zoned 'New Proposed Residential in the Killarney Town Development Plan 2009-2015 (as extended and varied), and to the national and local policy objectives to encourage increased densities in such locations, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would not adversely impact the character of the village and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 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 24<sup>th</sup> day of May, 2019 and by the further plans and particulars received by An Bord Pleanála on the 15<sup>th</sup> day of August, 2019, 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.

**Reason:** In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on the 6<sup>th</sup> day of July, 2016 under planning register reference number 15/765, and any agreements entered into thereunder.

**Reason:** In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. The proposed development shall be amended as follows:-
  - (a) the bathroom and landing windows on the first and second floors of the apartment block shall be fitted with obscure glazing, and

- (b) the finished floor levels of the apartment block shall match those of the dwellings granted under the parent permission planning register reference number 15/765 and shall have regard to the finished floor levels in Doirín Alainn estate to the east.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of the residential and visual amenity of the area.

4. Prior to the commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water. No dwelling shall be occupied until water and sewerage services serving the development have been installed and functioning in accordance with the connection agreements made with Irish Water.

**Reason:** To ensure that satisfactory water and wastewater arrangements are in place to serve the development.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interests of amenity and of traffic and pedestrian safety.

8. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

9. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations 2001, or any statutory provision modifying or replacing them, no room in the proposed apartments shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission

**Reason:** In the interest of residential amenity.

10. Parking for the development shall be provided in accordance with the Site Layout Plan drawing number 1000 P02 submitted to An Bord Pleanála on the 15<sup>th</sup> day of August, 2019. A minimum of one number parking space shall be provided for each residential unit hereby permitted and shall also provide for a minimum of two number parking spaces which shall be reserved for persons with physical disabilities.

**Reason:** To ensure adequate off-street parking provision is available to serve the proposed development.

11. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

**Reason:** In the interests of amenity and public safety.

12. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

13. (a) All screen walls and boundary walls within the proposed development shall be constructed and finished in accordance with the details submitted to the planning authority.

- (b) Details of the location, design and construction method of any retaining walls, including those between plots, shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** In the interests of visual amenity and public safety.

- 14. The landscaping scheme shown on the Site Layout Plan drawing number 1000 P01 as submitted to the planning authority on the 26<sup>th</sup> day of April, 2019 and as amended by the Site Layout Plan drawing number 1000 P02 submitted to An Bord Pleanála on the 15<sup>th</sup> day of August, 2019 shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interests of residential and visual amenity.

- 15. All trees within and on the boundaries of the site shall be retained and maintained, with the exception of the following:

- (a) specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development, and

- (b) trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, as identified in the qualified tree surgeon's report, which was submitted to the planning authority on the 7th day of December 2018, and which shall be replaced with agreed specimens.

Retained trees shall be protected from damage during construction works. Within a period of six months following the substantial completion of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

**Reason:** In the interests of visual and residential amenity.

- 16. (a) Prior to the commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at a minimum a radius of 2 metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- (b) Any construction equipment, machinery or materials that are currently stored in the vicinity of the trees to be retained shall be removed within one month of the date of this Order.



- (c) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

**Reason:** To protect trees and planting during the construction period and in the interests of visual and residential amenity.

17. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on the site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or are seriously damaged or diseased within a period of five years from the substantial completion of the development with others of a similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To secure the protection of the trees on the site.

18. Proposals for an estate/street name, housing and apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house and apartment numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

19. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 26<sup>th</sup> day of April, 2019. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

**Reason:** In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

20. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

21. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

22. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

23. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

25. 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 and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

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**Michelle Fagan**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this                      day of                      2019.**