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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 18/1095**

**Appeal** by William Murphy care of Ger O’Keeffe Consulting Engineers Limited of Friary Lane/4 Day Place, Tralee, County Kerry against the decision made on the 4<sup>th</sup> day of December, 2019 by Kerry County Council to grant subject to conditions a permission to Ted McCarthy Construction Limited care of Davide Mosca Design of 41/42 High Street, Killarney, County Kerry in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** (a) Erect 4 number duplex houses and (b) retention permission to retain and complete existing steps from Muckross View and all associated site works at Dromhale, Flesk Road/Woodlawn Road, Killarney, County Kerry, as amended by the further public notice received by the planning authority on the 7<sup>th</sup> day of November, 2019.

**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 'Existing 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 and the development for which retention permission is sought would not seriously injure the visual or residential amenities of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development and the development for which retention permission is sought 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 to the planning authority on the 6<sup>th</sup> day of December 2018 and the 8<sup>th</sup> day of October 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. The random rubble stone wall along the western boundary of the site shall be retained and restored as part of the proposed development. Detailed structural drawings and a construction method statement indicating the means proposed to ensure the protection of the structural stability of the wall to be retained shall be submitted to, and agreed in writing with, the planning authority prior to commencement of works on the site. These details shall include the methods proposed to protect the foundation system including an underpinning, structural bracing and support and the method of construction.

**Reason:** To ensure that the boundary wall is maintained and protected from any unnecessary damage.

3. The existing pedestrian pathway shall be retained, upgraded and completed for the entire length of the route from Muckcross Road to Muckcross View prior to the making available by the developer for occupation of the dwelling units and shall follow the route granted by An Bord Pleanála under PL63.215756. The proposed improvement works shall include the following details: -

- (a) the location and design of the flights of steps along the route,
- (b) the materials and finishes of the surface of the path and steps which shall include the use of durable, non-slip and bound pavement materials,
- (c) the design and provision of the public lighting along the route,
- (d) the provision of handrails along the route.
- (e) boundary treatment and landscaping along the route, and
- (f) drainage proposals for the footpath.

Detailed 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 interest of the residential amenity and connectivity 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 made available by the developer for occupation, 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. All of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of sustainable transportation.

9. 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 pedestrian pathway referred to in condition number 3 of this Order, roads, footpaths 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.

10. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations 2001, or any statutory provision modifying or replacing them, none of the proposed dwelling units shall be used for the purpose of providing overnight paying guest accommodation, or short term letting of any kind, without a prior grant of planning permission

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

11. Access to the development shall be by means of the vehicular access granted under planning permission reference number 16/884. The gradient of the access roadway shall be minimised, and measures shall be provided to ensure that large vehicles can enter the site and leave in forward gear. This roadway shall be fully completed prior to the making available by the developer for occupation of any of the proposed dwelling units.

**Reason:** In the interests of traffic safety.

12. 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 by the developer for occupation of any dwelling unit.

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

13. 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.

14. The landscaping scheme on the drawing entitled Landscape Layout as submitted to the planning authority on the 8<sup>th</sup> day of October 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. Proposals for an estate/street name, housing 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 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.

16. 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 dwelling unit curtilage 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.

17. 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.



18. 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.

19. 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 of roads, footpaths, watermains, drains, communal open space and other services required in connection with the development including the completion of the pedestrian pathway referred to in condition number 3 of this Order, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion 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 of the development.

20. 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.

21. The developer shall pay the sum of €5,000 (five thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of safety improvement works and traffic calming on the N71 and the L3907, improvement of the footpaths on the L3907 leading to the development and improvements of the public lighting infrastructure and undergrounding of services on the N71 and L3907. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development contribution Scheme and which shall benefit the proposed development.

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**Chris McGarry**

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

**Dated this            day of            2020.**