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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 19/64**

**Appeal** by Pat and Mary Carmody of “Rathmore House”, Rock Road, Killarney, County Kerry and by Anne Kelliher of Camellia House, Rock Road, Killarney, County Kerry and by Killark Residential Limited care of HW Planning of 5 Joyce House, Barrack Square, Ballincollig, County Cork against the decision made on the 20<sup>th</sup> day of December, 2019 by Kerry County Council to grant subject to conditions a permission to the said Killark Residential Limited in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** (i) The demolition of existing industrial buildings and associated infrastructure and (ii) the construction of a residential development of 25 number two-storey townhouses, landscaping and all ancillary site development works. The proposed development consists of 10 number two bedroom units, 14 number three bedroom units, one number four bedroom unit. Vehicular access to the proposed development will be via an existing entrance off Marian Terrace to the northeast. A new pedestrian access is proposed on the western site boundary to a public lane serving

O'Kelly's Villas to the north and Bishop Moynihan's Crescent to the south at the former Killarney Dairies Site, Kilcoolaght, 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 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 18<sup>th</sup> day of September 2019 and the 28<sup>th</sup> day of November 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 proposed development shall be amended as follows:
  - (a) The bathroom and landing windows on the first floors of the dwelling units shall be fitted with obscure glazing.
  - (b) The disabled parking bay shall be removed from the area of public open space and shall be provided in lieu of one of the visitor parking bays instead, with any necessary adjustments to the adjoining planting strip to accommodate the larger bay. The area to the north of Bay 24 shall be absorbed into the public open space.

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 amenities of the area.

3. Prior to 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 proposed 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 proposed development.

4. 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.

5. 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.

6. 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 interest of amenity and of traffic and pedestrian safety.

7. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the “Recommendations for Site Development Works for Housing Areas” issued by the Department of Environment and Local Government in November 1998. Following completion, the development shall be maintained by the developer, in compliance with the standards, until taken in charge by the planning authority.

**Reason:** To ensure that the development is carried out and completed to an acceptable standard of construction.

8. 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 houses shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

**Reason:** In order to prevent overdevelopment of the site in the interest of residential amenity.

9. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the houses, without a prior grant of planning permission.

**Reason:** In the interest of the amenities of the area.

10. Parking for the development shall be provided in accordance with the Site Layout Plan Drawing Number 31001 P01.01, submitted to the planning authority on the 18<sup>th</sup> day of September 2019, except for the amendment required by condition 2(b) above. A minimum of one parking space shall be provided for each residential unit hereby permitted and shall also provide for a minimum of three visitor spaces and one parking space 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 which shall include the relocation of the existing public light at the pedestrian entrance to the site, 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. Ducting for electric vehicle charging shall be provided for all car parking spaces, including in-curtilage spaces, to facilitate the installation of electric vehicle charging points/stations at a later date. Details of such ducting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

14. (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 on the 18<sup>th</sup> day of September 2019.  
  
(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.

15. The landscaping scheme shown on Drawing Number 31004 P01.01, entitled Proposed Landscape Plan, as submitted to the planning authority on the 29<sup>th</sup> day of January 2019, and as amended by Drawing Numbers 31001 P01.01 and 31006 P01.01 received by the planning authority on the 18<sup>th</sup> day of September 2019 and by Drawing Number 19663-5003 Rev A (Proposed Site Development Layout) received on the 28<sup>th</sup> day of November 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.

16. 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.

17. The areas of public open space shown on the submitted 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 29<sup>th</sup> day of January 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.



18. 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 94(4) and section 96(2) and (3) (Part V) 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 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the An Bord Pleanála 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.

19. 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.

20. Construction and demolition waste shall be managed in accordance with a construction waste management and demolition plan which shall be submitted to and agreed in writing with the planning authority prior to commencement of development on the site. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects” published by the Department of Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases and details of the methods and location to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provisions of the Waste Management plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

21. Prior to commencement of development on the site, the developer shall retain the services of a qualified and experienced asbestos-removal contractor to carry out a final survey to determine the presence of asbestos and any other hazardous material and to plan, co-ordinate and undertake the dismantling and removal of all asbestos-containing materials from the site and the subsequent transfer of same to an appropriately authorised facility for disposal. All hazardous waste material shall be disposed of in an environmentally safe and appropriate manner and in accordance with the Waste Management Plan for the Region.

**Reason:** In the interests of orderly development and environmental protection.

22. 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, dust suppression, pest control, bunding of oil containment facilities and measures for the prevention of silt/sediment from entering any watercourse or drainage system.

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

23. 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.

24. 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.

25. The developer shall pay the sum of €92,250.00 (ninety two thousand, two hundred and fifty euro only) (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:
- (a) Resurfacing of the road and provision of a footpath linking the site entrance with Marian Terrace (€34,000);

- (b) Resurfacing and upgrading of the western laneway to the south of the new pedestrian entrance to the development following completion of the upgrade to the Irish Water infrastructure, as shown shaded blue on Drawing Number 19663-5003 Rev. A, submitted to the planning authority on the 28th day of November 2019 (€36,500); and
- (c) Provision of six public lights to be located on the eastern laneway and on the blue-shaded section of Drawing Number 19663-5003 Rev. A, submitted to the planning authority on the 28th day of November 2019 (€21,750).

This contribution shall be paid prior to the 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 for determination.

**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 by the Development Contribution Scheme and which will benefit the proposed development.

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

**Dated this                      day of                      2020**