

An  
Bord  
Pleanála

**Board Order**  
**ABP-320288-24**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 2460295**

**Appeal** by Brian O'Callaghan care of FP Logue LLP of Lenin House, Rear 25 Strand Street Great, Dublin, and by Portal Asset Holdings Limited care of Harry Walsh Planning of 5 Joyce House, Barrack Square, Ballincollig, Cork, and by Others against the decision made on the 8<sup>th</sup> day of July 2024 by Kerry County Council to grant, subject to conditions, a permission to Portal Asset Holdings Limited in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** The construction of a residential development of 224 number residential units with ancillary two-storey crèche, landscaping, road improvements, pedestrian/cycleways, storm water upgrades and associated site development works.

The proposed development makes provision for 76 houses comprising of eight number two-storey two-bedroom townhouses, 28 number two-storey three-bedroom townhouses, 10 number two-storey three-bedroom semi-detached units and 30 number two-storey four-bedroom semi-detached units. The proposed development includes 148 number apartments/duplexes to be provided as follows: Block one (four number two-bedroom and four number

three-bedroom over three storeys); Block two (two number two-bedroom and two number three-bedroom over three-storeys); Block three (four number one-bedroom, 10 number two-bedroom and six number three-bedroom over three-storeys); Block four (10 number one-bedroom and 10 number two-bedroom over three-storeys); Block J (32 number two-bedroom over four storeys); Block K (16 number one-bedroom apartments and 16 number two-bedroom apartments over four storeys); Block L (32 number two-bedroom apartments over four storeys).

The proposed development will provide for a new vehicular access and pedestrian entrances onto Port Road, upgrades to Port Road comprising reduction in carriageway widths, provision of shared pedestrian/cycle path, an uncontrolled pedestrian crossing and a pedestrian connection to Millwood Estate. It is proposed to upgrade the stormwater network on St. Margaret's Road (approximately 140 metres north of the main development site) to support the development. Ancillary infrastructure development works will include relocation/undergrounding of ESB powerlines, wastewater infrastructure including foul pumping station, surface water attenuation, water utility services, public lighting, bin stores, bicycle stores, ESB substations and all associated site development works, at Port Road and Saint Margaret's Road, Coollegrean, Inch, Knockreer, Ardnamweely and Derreen (townlands), 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.**

## Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the provisions and policies of the Kerry County Development Plan 2022-2028,
- (b) the zoning objective R1 – ‘New/proposed Residential Phase 1’ with an objective to ‘Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure’ of the Kerry County Development Plan 2022-2028,
- (c) to Housing for All issued by the Department of Housing, Local Government and Heritage, 2021, and Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- (d) the Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities, issued by the Department of Housing, Local Government and Heritage, January 2024,
- (e) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of Housing and Planning and Local Government, December 2023,
- (f) the Climate Action Plan 2024,
- (g) the availability in the area of a wide range of social and transport infrastructure,
- (h) to the pattern of existing and permitted development in the area,
- (i) the submissions received, and

(j) the report and recommendation of the Inspectors Report,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, comply with the statutory plan of the area and would be in accordance with the proper planning and sustainable development of the area.

The Board considered that condition number 3 of the planning authority's decision was not warranted on the basis that the granting of permission for the proposed development is not reliant on the proposed pedestrian and cycle connections through third-party lands as stipulated in the condition, and the development can proceed in the absence of the financial contribution specified under the provisions of Section 48(2)(c).

Furthermore, the Board decided to omit Condition number 9, which was recommended by the Planning Inspector, on the basis that the mitigation measures set out specially in relation to the protection of the lesser horseshoe bat are adequately addressed in the Natura Impact Statement (NIS) and therefore adequately covered in condition number 2 of the Board's Order. The mitigation measures contained in the NIS in respect of the lesser horseshoe bat have been confirmed as being acceptable by the National Parks and Wildlife Service in its submission to the planning authority (letter dated 17th of June 2024).

#### **Appropriate Assessment (AA) – Stage 1:**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within an established town centre location and

adequately serviced urban site, the Appropriate Assessment Screening Report submitted with the application, the Inspector's Report, and submissions on file.

In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, other than Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365).

### **Appropriate Assessment - Stage 2**

The Board considered the Natura Impact Statement and all other relevant submissions including expert submissions received and carried out an Appropriate Assessment of the implications of the proposed development on Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365) in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European site.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's conservation objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site in view of the conservation objectives of the site. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

#### **Environmental Impact Assessment (EIA):**

The Board completed an Environmental Impact Assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations, 2001, as amended, identifies and describes adequately the effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development, which is substantially below the thresholds in respect of paragraphs 10(b)(i) and (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 as amended,
- (b) the existing use of the site and the pattern of development in the vicinity,
- (c) the availability of public water and foul services to serve the proposed development,

- (d) the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, and the content of the applicant's Environmental Impact Assessment screening report, and,
- (e) the measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Environmental Management Plan,

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and the submission of an Environmental Impact Assessment Report would not therefore be required.

### **Conclusions on Proper Planning and Sustainable Development**

Having regard to the provisions of the Kerry County Development Plan 2022 - 2028, and the zoning objective for the site R1 'new /proposed residential phase 1', to the location of the site and its relative proximity to the town centre and to the nature, form, scale, and design of the proposed development, it is considered, that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area, would not be prejudicial to public health, would be generally acceptable in terms of traffic and pedestrian safety and convenience, and would provide an acceptable form of residential amenity for future occupants. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area and would be in compliance with the statutory plans of the area.



## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and revised by further information 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

**Reason:** To protect the integrity of European Sites.

3. (a) An Ecologist shall be appointed by the developer to oversee the site set-up and construction of the proposed development, and the Ecologist shall be present on-site during construction works, ensuring that the identified mitigation measures are fully implemented.
- (b) The developer shall retain the services of a competent environmental consultant to carry out freshwater biological (Q) monitoring prior to and after each phase of the construction of the proposed development. A proposed plan for the monitoring programme shall be submitted to the local authority for agreement



prior to the commencement of any works on-site and the results of all such monitoring shall be submitted to the planning authorities upon completion.

- (c) The developer shall provide for a minimum of 30 swift boxes throughout the site.

**Reason:** In the interest of protecting the environment and to encourage greater levels of biodiversity.

- 4. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

**Reason:** To ensure that adequate public open space, road and pedestrian/cycle infrastructure be provided in accordance with the development of housing and in accordance with the plans of the planning authority.

- 5. Each residential unit shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

**Reason:** In the interest of sustainable development and proper planning.

- 6. Details of the materials, colours, and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

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

7. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of urban legibility.

8. 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 and surface water management

9. The developer shall enter into water and wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

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

10. The landscaping scheme shown on drawing number 300-01, as submitted to the planning authority on the 14<sup>th</sup> day of May 2024 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 interest of residential and visual amenity.

11. Public lighting shall be provided in accordance with a scheme which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include lighting along, the Port Road, pedestrian routes through open spaces and shall take account of trees within the drawing landscape plan drawing number 300-01. Such lighting shall be provided prior to the making available for occupation of any residential unit.

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

12. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
  - (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

13. All service cables associated with the proposed development, such as electrical, telecommunications and communal television, shall be located underground. Ducting shall be provided along the Port Road to enable the undergrounding of electricity overhead powerlines.

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

14. The road network serving the proposed development, including turning bays, junction with the public road, footpaths and kerbs, shall be in accordance with the detailed construction standards of the Planning Authority and in accordance with DMURS for such works. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

15. All footpaths and cycleways shown to adjoining lands shall be constructed up to the boundaries to provide access to adjoining lands with no obstruction including the erection of any structure which would otherwise constitute exempted development under the Planning and Development Regulations 2001, as amended. These areas shall be shown in a drawing which shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of permeability and proper planning and sustainable development.

16. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. All car parking spaces shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.

**Reason:** To ensure that adequate parking facilities are permanently available to serve the proposed residential units and the remaining development.

17. All the communal parking areas serving the residential units, including the apartment blocks shall be provided with functional electric vehicle charging points, and 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.

18. All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company. Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

19. (a) 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 and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.
- (c) This plan shall provide for screened bin stores, which shall accommodate not less than three standard sized wheeled bins within the curtilage of each house plot.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

20. Prior to commencement of development, the developer shall prepare a Resource Waste Management Plan (RWMP) as set out in the Environmental Protection Agency's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021), including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on file and retained as part of the public record. The RWMP shall be submitted to the planning authority for written agreement prior to commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

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

21. The construction of the development shall be managed in accordance with a Construction 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:
- (a) the location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) the location of areas for construction site offices and staff facilities;
  - (c) the details of site security fencing and hoardings;



- (d) the details of on-site car parking facilities for site workers during the course of construction;
- (e) the details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) measures to obviate queuing of construction traffic on the adjoining road network;
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) the details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) the off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) the means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

22. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, 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. (a) Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant houses and duplex units permitted, to first occupation by individual purchasers, that is, those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers

and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

24. 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 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 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 of the area.

25. 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.

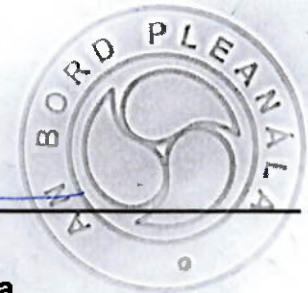
26. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.



**Paul Caprani**

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



Dated this 12 day of November 2024.