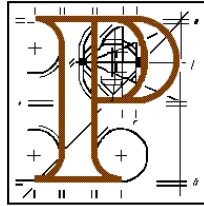

An Bord Pleanála



Inspector's Report

Ref.: PL08.247486

Development: 1) Demolish existing office building and construct a drive through restaurant; 2) Construct service station and canopy to front of existing supermarket; 3) Construct building containing 4 nr shop units and 12 nr 2 bedroom apartments; 4) Change use of existing shop units in Countess Shopping Centre as follows a) Unit nr 1 from financial services to retail; b) Unit nr 4 from financial services to restaurant 5) Alter layout of units 2 and 3, as detailed on plans; 6) Construct car parking, traffic control measures, drainage and all ancillary works, in accordance with plans and particulars submitted.

Avenue, Park Road, Killarney, Co. Kerry.

PLANNING APPLICATION

Planning Authority: Kerry County Council

Planning Authority Ref.: 16/235

Applicant: Mike Hegarty Jnr.

Type of Application: Permission

Planning Authority Decision: Split Decision

APPEAL

Type of Appeal: First Party v. Decision

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 23rd January, 2017

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located at the junction of Park Road with Countess Road in the eastern suburbs of Killarney town, approximately 1.0km east of High Street in the town centre, where it occupies a prominent position in a mixed-use area adjacent to the Deerpark Roundabout which is characterised by the presence of a variety of retail, commercial and service uses, in addition to a notable residential component, although on progressing eastwards along Park Road there is a gradual transition with the residential component of the area becoming increasingly prevalent.

1.2 The site itself has a stated site area of 1.22 hectares, is irregularly shaped and consists of two distinct elements in that the northern extent of same is occupied by the predominantly single storey Countess Shopping Centre with its associated car parking area, in addition to a two-storey office building and a small plot of undeveloped lands to the rear of same, whilst the remainder of the site to the south of the aforementioned construction comprises undeveloped scrubland.

1.3 The existing shopping centre can be accessed via a number of dedicated entrance / exit points onto both Park Road and Countess Road, although it should be noted that the north-eastern extent of this complex is not in the ownership of the applicant. The wider site area is bounded by Park Road to the north and by Countess Road to the east whilst the adjacent lands to the immediate west include a substantial two-storey guesthouse alongside Park Road and a plot of vacant land to the south of same. The Killarney-Mallow railway line ultimately bounds the site to the south.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development consists of the following:

- The demolition of an existing two-storey, detached office building (floor area: 153m²).
- The construction of a single storey drive-through restaurant (floor area: 271.5m²).
- The provision of a service station to the front of the existing supermarket which will include for a new forecourt area with 2 No. pump islands and an overhead canopy construction.

-
- The construction of a four-storey building containing 4 No. ground floor retail / shop units (each with a floor area of 113.5m²) and a total of 12 No. two-bedroom apartments (each with a floor area of 107m²) over the first, second and third floors.
 - The change of use of 2 No. existing shop units within the Countess Shopping Centre as follows:
 - a) Unit No.1 from financial services to retail (floor area: 59m²);
 - b) Unit No. 4 from financial services to restaurant (floor area: 132.5m²).
 - The alteration of the internal layout of Unit Nos. 2 and 3 within the Countess Shopping Centre.
 - The provision of car parking, traffic control measures, drainage and all ancillary works.

2.2 In response to a request for further information, an amended site layout plan was submitted which repositioned the proposed drive-through restaurant and the retail / residential block further southwards on site.

2.3 The applicant has indicated that he proposes to enter into negotiations with the Local Authority in order to satisfy his obligations as regards compliance with the requirements of Part V of the Planning and Development Act, 2000, as amended.

N.B. The grounds of appeal have been accompanied by an amended site layout plan which includes provision for a communal amenity space to serve the residents of the proposed apartment units.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 01203765. Refused Michael Hegarty Snr & Hegarty Jnr permission to construct a bar/restaurant development with parking and ancillary works at Park Road, Avenue Townland, Killarney, Co. Kerry.

PA Ref. No. 13/5391 / ABP Ref. No. PL63.242286. Was refused on appeal on 21st November, 2013 refusing Mike Hegarty permission for change of use of ground floor of premises from office to use as a restaurant and takeaway at Avenue, Park Road, Killarney, Co. Kerry, for the following reasons:

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- The site is located in an area which is heavily trafficked by vehicles and pedestrians and close to a roundabout and to the entrance to a shopping centre. Under policy RT-03 of the Killarney Town Development Plan 2009-2015 it is an objective to enhance connectivity between the Town Centre and retail development at Deerpark. Having regard to the nature of the proposed development which includes a takeaway restaurant and to the arrangements for traffic and parking, it is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the proposed development would generate. It is, therefore, considered that the proposed development would be premature pending the implementation of a traffic management scheme for this area, which would include details of boundary walls, footpaths and entrances to lands in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
 - The proposed development, by reason of its nature and the noise and general disturbance which would be generated would seriously injure the residential amenities of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2 On Adjacent Sites:

PA Ref. No. 02203905. Was granted on 9th December, 2002 permitting JLT Tiles permission for the construction of a storage unit and associated site works at Avenue, Park Road, Killarney, Co. Kerry.

PA Ref. No. 023970. Was granted on 28th April, 2003 permitting David Hegarty Jnr. permission a) to make existing petrol filling station redundant; b) to demolish existing petrol sales shop and store; c) to construct a new retail unit on two levels with stairwell and bin stores at Park Road, Killarney, Co. Kerry.

PA Ref. No. 06/4543 / ABP Ref. No. PL63.218884. Was granted on appeal on 12th April, 2007 permitting Meadowlawn Properties Limited permission for the construction of a 35,079m² retail development, with provision for a new vehicular entrance. The development shall consist of: (I) the provision of 8 No. retail units comprising (a) 1 No. anchor store of 6,356m² gross floor area, and (b) 7 No. retail units with a gross floor area of 9,334m² (II) 1 No. café/restaurant; (III) 1 No. management suite and customer service facilities; (IV) basement level car park providing 563 spaces; (V) mechanical externally fixed plant at roof level; and (VI)

ancillary infrastructure including (a) 2 No. Electricity Supply Board substations, (b) 3 No. gas compounds, (c) 1 No. oil tank and bund, (d) 1 No. standby generator, and (e) 1 No. sprinkler pump house and storage area; (VII) external signage including 2 No. totem poles; (VIII) on and off-site landscaping treatment and provision of a vehicular set-down area which includes lands within the ownership of Killarney Town Council; and (IX) all ancillary site development works, all on the site formerly known as the Torc Great Southern Hotel on Park Road, Killarney, Co. Kerry.

PA Ref. No. 07204727. Was granted on 16th July, 2007 permitting Killarney Credit Union permission for a change of use from retail to Credit Union branch outlet at Unit No. 3, Avenue Townland, Park Road, Killarney, Co. Kerry.

PA Ref. No. 07204778. Was granted on 11th October, 2007 permitting Paddy Power Plc. permission for the change of use of existing retail units to Betting Office use, external signage and erection of 3 No. satellite dishes on flat roof above at Units 1 & 2, Countess Shopping Centre, Park Road, Killarney, Co. Kerry.

PA Ref. No. 07204780. Was granted on 11th October, 2007 permitting Killarney Credit Union permission for the installation of ATM machine at existing premises at Unit No. 3, Avenue Townland, Park Road, Killarney, Co. Kerry.

PA Ref. No. 08204887. Was granted on 17th July, 2008 permitting Meadowlawn Properties Ltd. permission to modify existing planning permission - Bord Pleanala Reference: PL63.218884, Killarney Town Council Reference: 06/4543, to provide for revised submerged open surface car parking of permitted 107 spaces at the eastern section of the Torc Shopping Centre site, Park Road, Killarney, Co. Kerry.

PA Ref. No. 11205250. Was granted on 29th September, 2009 permitting Cormac and Eoin Deasy permission to make alterations to existing fascia signage, erection of 2 No. 'Green Cross' LED signage, erection of 1 No. totem style sign and alteration of front entrance door arrangement at Park Road Pharmacy, Countess Centre, Park Road, Killarney, Co. Kerry.

PA Ref. No. 12205330. Was granted on 1st May, 2013 permitting Cormac and Eoin Deasy permission for the retention of alterations to design and finish of the front elevation, alterations to entrance door arrangement, erected

advertising/signage and associated site works at Park Road Pharmacy, Countess Centre, Park Road, Killarney, Co. Kerry.

PA Ref. No. 16335. Application by Torcbridge Ltd. for permission for Phase 1 of a visitor and conference centre with ancillary cafes and restaurants, supported by tourist focused retail outlets and associated parking, including for coaches. The Phase 1 development will consist of (i) Conference centre of 3,087m² incorporating 7 No. multi purposes auditoria with a 868 No. seating capacity at forts floor level with plant room above, ground floor entrance, reception, 4 No. ancillary café / bar / restaurants with associated services, W.C. and plant areas (ii) Vehicular entrance off Park Rd. with priority controlled junction at Friary Downs (iii) 163 No. car park spaces, 10 No. coach parking spaces (iv) Fire brigade access through new emergency gates off existing residential lay-by on Park Rd. (v) Landscaped public space facing Park Rd. with vehicular set-down area. All at site formerly known as the Torc Great Southern Hotel, Park Rd., Killarney, Co. Kerry. This application was withdrawn.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

Following the receipt of a response to a request for further information, on 4th October, 2016 the Planning Authority issued a split decision in respect of the proposed development as follows

- To **GRANT** permission to *(a) demolish existing office building, (b) change use of existing shop units in Countess Shopping Centre as follows (i) Unit nr 1 from financial services to retail; (ii) Unit nr 4 from financial services to restaurant (iii) alter layout of units 2 and 3, as detailed on plans; (c) construct car parking, traffic control measures, drainage and all ancillary works* subject to 6 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 - Requires payment of a special development contribution in the amount of €50,000 towards the cost of improvements to the public footpath network required to facilitate the proposed development.

Condition No. 3 – Refers to the proposed demolition works and associated waste management.

Condition No. 4 – Requires the implementation of good site management practices in order to prevent the

discharge of contaminated waters during construction of the proposed development.

Condition No. 5 – Requires the submission of a revised car parking layout plan for the written agreement of the Planning Authority prior to the commencement of development.

Condition No. 6 - Refers to various traffic management and infrastructural requirements, including the implementation of all the recommendations of the Stage 1 Road Safety Audit and the need to undertake a further Stage 2/3 Road Safety Audit of the scheme prior to opening.

- To **REFUSE** permission *'To construct a drive through restaurant, construct service station and canopy to front of existing supermarket, construct building containing 4 nr shop units and 12 nr 2 bedroom apartments'* for the following 3 No. reasons:
 - It is considered that the proposed drive through restaurant, by reason of its siting, its nature and the noise and general disturbance which would be generated, would seriously injure the residential amenities of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.
 - It is considered that the proposed 4-storey retail / apartment block, by reason of its siting, height and design, would seriously injure the amenities of adjoining residential property due to overlooking, would not integrate with existing development in the vicinity, would compromise the development potential of adjoining lands to the west and would, therefore, be contrary to the proper planning and sustainable development of the area.
 - Based on the information submitted with the planning application, the Planning Authority is not satisfied that the traffic safety measures required adjacent to the roundabout at the junction of Park Road and Countess Road can be implemented by the applicant. Therefore, the traffic movements likely to be generated by the proposed service station would endanger public safety by reason of traffic hazard and the proposed development would be contrary to the proper planning and sustainable development of the area.

4.2 Objections / Observations:

A total of 9 No. submissions were received from interested third parties and the principle grounds of objection contained therein can be summarised as follows:

- The unsuitability of the site location given the nature of the development proposed, with particular reference to the drive-through restaurant.
- Detrimental impact on the amenities of adjoining properties by reason of overlooking, loss of privacy, noise, odours, littering and anti-social behaviour etc.
- Concerns with regard to an over-supply of retail floorspace.
- Excessive proliferation of signage.
- The overall height of the proposed retail / residential building is out of keeping with the surrounding pattern of development.
- Increased traffic congestion and unsafe parking practices.
- Deficiencies in the submitted proposal as regards the adequacy of the delivery arrangements, means of escape etc.
- Comparable proposals for a restaurant / takeaway have previously been refused permission on site.
- Potential disruption to the trading of adjacent retail units.

4.3 Internal Reports:

County Archaeologist: States that there are no recorded monuments in the immediate vicinity of the proposed development and that although the scale of the development proposed would normally warrant pre-development archaeological testing, the site has been previously disturbed. Accordingly, no mitigation is required.

Estates Unit: Notes that there are no services to be taken in charge before recommending that a stop sign and associated thermoplastic lining be provided at the junction of the site entrance with the public road. It is also queried whether the proposed access point onto the side road would be preferable to an access onto Park Road although it is acknowledged that the Roads Section will advise with respect to same.

Fire Services Department: No objection subject to compliance with fire safety requirements.

Operations, Health and Safety: An initial report recommended that the applicant be requested to submit the following by way of a request for further information:

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- A Traffic Impact Assessment outlining the traffic volumes associated with the proposed development.
 - A site layout plan outlining the internal traffic flow paths within the development.
 - A Stage 1 / 2 Road Safety Audit of the final proposal.

Following the receipt of a response to a request for further information, a further report was prepared which stated that the Operations Dept. had reservations as regards the proposed construction of the filling station adjacent to a busy roundabout. These concerns were further compounded by the proposal to construct a 600mm high wall adjacent to the roundabout outside of the site curtilage and without the consent of the relevant land owner. Accordingly, it has been concluded that the construction of the proposed filling station would present a traffic hazard. With regard to the remainder of the development proposal, the report recommends the imposition of a series of conditions in the event of a grant of permission, including a requirement to implement in full the recommendations of the Road Safety Audit (Stage 1) and to pay a special development contribution in the amount of €50,000 towards improvements to the public footpath network.

4.4 Prescribed Bodies / Other Consultees:

Inland Fisheries Ireland: Makes a series of recommendations with regard to the implementation of good site management practices during the construction phase in addition to foul and surface water drainage arrangements.

Health Service Executive / Environmental Health Officer: Specifies a series of requirements with regard to matters pertaining to wider public health considerations, including the need for adequate ventilation arrangements within the proposed restaurant, the provision of suitable refuse storage facilities and the need for compliance with the Food Hygiene Regulations.

Irish Water: No objections subject to conditions.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- Each of the uses proposed are permissible within a 'Town Centre B' land use zoning as set out in the Killarney Town Development Plan, 2009.

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- The proposed development will facilitate the provision of much needed traffic management and control measures as highlighted by ABP Ref. No. PL08.242286.
 - The proposed development will facilitate compliance with Condition Nos. 8, 9 & 10 of the grant of permission issued in respect of PA Ref. No. 02/3970.
 - The proposed development is sensitive to the adjoining areas and does not involve overdevelopment of the application site.
 - By way of background, the Board is advised that a previous development proposal lodged on site which sought to change the use of the ground floor of an existing premises from office to use as a restaurant and takeaway was refused permission on appeal (ABP Ref. No. PL63.242286) primarily on the grounds that it was considered to be *'premature pending the implementation of a traffic management scheme for the area'*. Accordingly, the applicant subsequently commenced Judicial Review proceedings against Killarney Town Council in order to secure the implementation of the Traffic Management Plan for the area which was considered necessary in order to allow the applicant to proceed with the further development of his lands. One of the key issues raised in these judicial review proceedings concerns a dispute pertaining to the closure of an existing entrance directly onto the adjoining roundabout at Park Road which was required by Condition Nos. 8, 9 & 10 of a previous grant of permission issued under PA Ref. No. 02/3970 which authorised the decommissioning of a petrol filling station and the construction of a retail unit over two levels. The proceedings were subsequently adjourned until July, 2016, by agreement, subject to the submission of a planning application by the applicant which would propose, amongst other items, traffic management measures. The subject proposal represents the submission of the required planning application. In addition to the foregoing, it should be noted that the Local Authority has yet to publish its Traffic Management Plan for the area and that the applicant was informed by the Legal Dept. of the Local Authority that he was precluded from holding pre-planning discussions with the Area Planner.
 - The submitted proposal has taken cognisance of the contents of the Inspector's Report prepared in respect of ABP Ref. No. PL63.242286, which indicated that a full takeaway service would not be acceptable and that a takeaway use ancillary to a restaurant may be suitable, and thus the proposed drive-through takeaway is considered to be more appropriate to the subject site given its out of town centre location.
 - In response to a request for further information, the location, siting and entrance / exit point to the proposed drive-through restaurant have been revised and relocated 30m further south which has served to ensure that

views of the northern end of the restaurant from the adjoining guesthouse will be obscured by an existing shed. Further mitigation will be provided by way of additional landscaping along the western site boundary in order to eliminate any noise or general disturbance. Adjustments have also been made to the internal traffic layout to further enhance and complement the proposed development.

- The provision of a drive-through restaurant at this out of town centre location will serve to complement and enhance the amenities of the area and in this regard it is also of relevance to note that there is already a similar format of restaurant c. 200m to the west of the application site.
- The proposed development of retail / residential units accords with the land use zoning of the application site as 'Town Centre B'. Furthermore, the adjoining lands to the west are also zoned as 'Town Centre' and are currently the subject of a planning application for a development which will include car parking, auditoria, cafes, bars and restaurants (PA Ref. No 16/335). Accordingly, it is submitted that the provision of residential units would hardly serve to compromise the potential for such a development.
- The proposed residential units have been set back c. 4.5m from the adjoining development lands to the west and in this regard it is submitted that separation distances in urban areas can be as little as 1.0m. Whilst the Planner's Report has indicated that it is not in favour of the subject proposal due to its height and proximity to the site boundary, the Board is referred to the precedents set by similar developments approved and constructed in the immediate vicinity of the application site, with specific reference to PA Ref. Nos. 05/204396 & 03/204037.
- The suggestion that the balconies on the second and third floors of the proposed retail / residential block would overlook the private amenity space of those properties to the north is rejected on the basis that the balconies in question are orientated to face eastwards with a separation distance of c. 150m to those residential properties to the east.
- The assertion by the Planning Authority that the proposed retail / residential building is 9.75m from the rear boundary of a residential property (a guesthouse) which fronts onto Park Road (PA Ref. No. 95/2763) is rejected as the building in question is c. 44m from the rear boundary of that property. By way of clarity, it should be noted that the boundary to which the Planning Authority has referred actually concerns a derelict / brownfield site which was previously the subject of grants of permission issued under PA Ref. Nos. 94/2660 & 98/3381 (both of which have since expired).
- The Planner's Report has stated that two-storey dwelling houses comprise the predominant building type in the area, however, this is considered to be

incorrect and it is submitted that it would be difficult to locate a site with such a diverse mix of buildings of varying heights, sizes and uses in its vicinity, such as Tesco, Aldi, Homebase, Marks & Spencer, Argos, Deerpark Retail Park & Central Point.

- With regard to the traffic implications of the proposed service station the Board is advised that the request for further information issued by the Planning Authority included for the submission of the following:
 - A Traffic Impact Assessment
 - An internal traffic flow layout
 - A Stage 1 / 2 Road Safety Audit
 - The consent of the adjoining landowner with regard to the erection of a 0.6m high wall along the edge of the public footpath.

MHL Consulting Engineers carried out a critical analysis of the proposed development in accordance with the Traffic and Transport Assessment Guidelines which effectively concluded that the submitted proposal (with certain adjustments and improvements pertaining to traffic safety) and its impact on the local road network would be minimal from a traffic perspective.

- The subject application includes a proposal to erect a 0.6m high wall along the edge of the public road and it is envisaged that this work could be paid for by way of a special levy. It has also been correctly assumed that the Planning Authority should have no difficulty with any such proposal. Indeed, it is apparent that the Local Authority considers the construction of this wall to be of paramount importance as regards traffic safety in the area. Notably, the relevant landowner, Mr. Mike Hegarty Jr., has consented to the closure of the existing entrance and has also offered to pay for the works by way of a special levy.
- It is considered that the consent of the adjoining landowner to close the existing entrance onto the roundabout is not required having regard to the following:
 - i) It is a condition of the grant of permission issued under PA Ref. No. 02/3970.
 - ii) Kerry County Council already has the consent of Mr. David Hegarty Jnr. and his predecessor in title (the late David Hegarty Snr.) as detailed in the affidavits filed with regard to the judicial review proceedings.

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- iii) The subject application clearly shows that the wall in question is to be constructed on the edge of the public footpath.
 - iv) The applicant does not possess the statutory powers to force such an issue on any landowner. Instead, this is a matter for the Local Authority and it is clearly set out in the 'Spatial Planning and National Roads, Guidelines for Planning Authorities: that:

'in achieving enhanced road safety, the planning authority should use their regulatory and enforcement powers accordingly'.

It is submitted that the Local Authority has failed in its duty in this regard. Furthermore, the Board is advised that the applicant's judicial review proceedings remain due for mention and that the entrance onto the roundabout is one of the matters due for examination as part of those proceedings. The Board could thus grant permission for the proposed development conditional on the closure of the entrance to the roundabout.

- It is evident from an examination of the various objections on file that many, if not all, of these parties may have been acting in concert with each other.
- It is submitted that the subject application has not been assessed in an impartial and unbiased manner by the Planning Authority due to the decision of the applicant to challenge the Local Authority by way of judicial review proceedings:
 - The applicant was precluded from engaging in pre-planning discussions with the Area Planner.
 - The request by the Planning Authority for the applicant to obtain the consent of a third party to close the existing entrance to the roundabout is simply an attempt to frustrate the subject application.
 - The calculation of the special development contribution of €50,000 is tenuous, particularly as the proposal would actually traffic to the shopping centre.
 - There are several examples in the Planner's Report of negative rhetoric / language being used in the assessment of the proposed development.
- The proposed development is sensitive to the surrounding area and is in keeping with the proper planning and development of the area.

Furthermore, the traffic management measures proposed will serve to enhance traffic and pedestrian safety in the area.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

7.0 NATIONAL AND REGIONAL POLICY

7.1 The *‘Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009’* note that in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

7.2 The *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015’* (which update the *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007’*) provide detailed guidance and policy requirements in respect of the design of new apartment developments. Notably, where specific planning policy requirements are stated in the document, the Minister intends that such requirements must take precedence over policies and objectives of development plans, local area plans or strategic development zone planning schemes. Furthermore, these guidelines apply to all housing developments that include apartments, whether public or private. The updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types and sizes – including households with a child or children, students, older people and an increasingly mobile workforce. They also seek to ensure that, through the application of a nationally consistent approach,

new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens.

8.0 DEVELOPMENT PLAN

Killarney Town Council Development Plan, 2009-2015:-

Land Use Zoning:

The proposed development site is located in an area zoned as 'Town Centre B' with the stated land use zoning objective 'to provide for and improve the development of the town centre excluding public houses and hotels'. Regrettably, the Development Plan provides no further guidance on what uses may or may not be permissible within this land use zoning, however, Section 12.3.5.1 of the Plan does state that 'Residential', 'Retail' & 'Restaurants' are 'Permitted Uses' within a 'Town Centre' land use zoning whereas 'Takeaway Fast Food' & 'Petrol Stations' are 'Not Permitted'.

Other Relevant Sections / Policies:

Chapter 3: Housing:

Section 3.2: Objectives

Section 3.5: Neighbourhood Concept

Chapter 5: Enterprise & Development:

Section 5.16: Brownfield development

Chapter 6: Retail Development:

Section 6.8: The preferred location for new retail development

Section 6.8.5: Neighbourhood Centres

Section 6.10: Future Retail Development

Chapter 8: Infrastructure:

Section 8.1: Roads, Traffic, Pedestrian and Transportation Issues

Chapter 12: Land Use Zoning Objectives and Development Management Standards:

Section 12.7: Requirements for New Residential Developments

Section 12.11: Residential Layout and Design:

Section 12.20: Apartments

Section 12.21: Apartment Open Space

Section 12.26: Infill Developments

Section 12.28: Brownfield Development

Section 12.45: *Commercial Development*

Section 12.56: *Petrol Filling Stations*

Section 12.60: *Hot food take-aways*

N.B. The duration of the Killarney Town Development Plan, 2009-2015 has been extended until such time as it is superseded by a Municipal District Plan.

9.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on the amenity of neighbouring properties
- Traffic implications
- Appropriate assessment
- Other issues

These are assessed as follows:

9.1 The Principle of the Proposed Development:

9.1.1 With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located in an area zoned as 'Town Centre B' in the Killarney Town Development Plan, 2009-2015 with the stated land use zoning objective 'to provide for and improve the development of the town centre excluding public houses and hotels', however, I would advise the Board that no further guidance is contained in the Development Plan as regards the acceptability or otherwise of any particular land use within the aforementioned land use zoning, although Section 12.3.5.1 of the Plan does state that 'Residential', 'Retail' & 'Restaurants' are 'Permitted Uses' within a 'Town Centre' land use zoning whereas 'Takeaway Fast Food' & 'Petrol Stations' are 'Not Permitted'. Accordingly, a degree of difficulty arises in assessing whether or not each element of the proposed development would be acceptable in principle at this location or whether it would be appropriate given the site context. In this respect I propose to assess the overall principle of each of the individual components of the wider development proposal having regard to the expressly stated objective of the land use zoning applicable to the subject lands, the nature and intensity of the development proposed and its relationship with the surrounding pattern of development, and the wider implications of the proposed

development, with particular reference to its impact (if any) on residential amenity.

9.1.2 The Demolition of an Existing Office Building and the Construction of a Drive-Through Restaurant:

9.1.2.1 Given the site context, in my opinion, the demolition of the existing office building is acceptable in principle, however, I would have a number of reservations as regards the construction of the proposed drive-through restaurant and in this respect it is of particular relevance to note that an earlier proposal to develop a restaurant with a takeaway component on site was previously refused permission on appeal under ABP Ref. No. PL63.242286. In that instance, the reporting inspector noted the transitional nature of the site location between the largely commercial area to the east and the primarily residential area to the west and then suggested that the development of a conventional hot-food takeaway at this location would be unacceptable due to the late-night noise and general disturbance typically associated such uses and the need to protect the residential amenity of the surrounding area. Concerns were also raised as regards the exact nature of the use proposed and it was further considered that any takeaway use would have to be completely ancillary to the principle use of the proposed restaurant with strict controls imposed in relation to opening hours etc.

9.1.2.2 Having considered the foregoing, and noting that there has been no significant change in the site context or the applicable development plan policy since the Board's determination of ABP Ref. No. PL63.242286, on balance, I am inclined to concur with the assessment of the previous reporting inspector that whilst a 'restaurant' use would certainly be 'open for consideration', any associated 'takeaway' component would have to be ancillary to same. In this respect it should be noted that notwithstanding the applicant's assertions that a 'drive-through' arrangement would be '*a more suitable form of takeaway*' at this location, in my opinion, it is clear that the subject proposal and its likely *modus operandi* or business model will provide for a considerable focus being placed on its takeaway component given that a 'drive-through' involves an inherent takeaway aspect. Similar formats of development are prevalent throughout the country and are typically associated with 'fast food' chains / franchises where the primary focus is on the takeaway aspect of the use. Indeed, from a review of the submitted floor plans it is apparent that only a limited area of floorspace within the proposed restaurant will be allocated towards 'in-house' seating and thus I am inclined to conclude that the submitted proposal will primarily operate as a takeaway outlet focused on the sale of hot food for consumption off the premises. Therefore, notwithstanding the applicant's suggested mitigation of limiting the

opening hours of the premises to 09:00-23:00 hours, in my opinion, the proposed drive-through restaurant will primarily comprise a fast food 'takeaway' operation which is *'Not Permitted'* within a *'Town Centre'* land use zoning as per the Town Development Plan.

9.1.2.3 Accordingly, having regard to the site context, with particular reference to the proximity of the proposed drive-through restaurant relative to nearby housing and overnight guest accommodation, and noting the nature of the development proposal as outlined above, it is my opinion that this aspect of the wider development proposal would be unacceptable due to the late-night noise and general disturbance likely to be associated with same and the need to protect the residential amenity of the surrounding area.

9.1.3 The Proposed Service Station:

9.1.3.1 Whilst the development of a 'Petrol Station' / service station on lands zoned as *'Town Centre'* would not be permitted pursuant to the provisions of Section 12.3.5.1 of the Killarney Town Development Plan, and although parallels could be drawn between that land use zoning and the subject site which is zoned as *'Town Centre B'*, it is of relevance to note that the wider land bank presently occupied by the Countess Shopping Centre previously included for use as a petrol filling station as evidenced by PA Ref. No. 023970. Accordingly, this historical usage of the site would appear to lend some degree of credence to the subject proposal, particularly as the overall function / role of the application site is perhaps more akin to a neighbourhood centre than a town centre.

9.1.3.2 Having regard to the site context, including its peripheral positioning relative to the 'town centre' proper, and the likely role of the Countess Shopping Centre as a neighbourhood centre, I am inclined to suggest that the development of a service station at this location would certainly be open for consideration, subject to an examination of the potential impact of the proposal on the amenities of the surrounding area, with particular reference to traffic safety.

9.1.4 The Proposed Retail / Residential Building (comprising 4 No. ground floor retail / shop units and 12 No. apartment units):

9.1.4.1 In light of the established use of the wider site area for retail purposes, it is clear that the development of the proposed retail / shop units is acceptable in principle at this location. Similarly, on the basis that residential development is normally permitted within the 'Town Centre', and given the site location in a transitional area with a notable residential component, I am satisfied that the

development of the proposed apartments is also acceptable in principle on the subject lands.

9.1.5 The Proposed Change of Use of 2 No. Existing Units within the Countess Shopping Centre:

9.1.5.1 Unit No. 1: Change of Use from Financial Services to Retail:

Similar to the construction of the proposed retail / residential building (which includes for the provision of 4 No. ground floor retail / shop units), it is my opinion that the proposed change of use from financial services to retail is acceptable in principle given the site context and the location of the unit in question within the Countess Shopping Centre.

9.1.5.2 Unit No. 4: Change of Use from Financial Services to Restaurant:

On balance, I would reiterate my earlier comments that a 'restaurant' use would certainly be 'open for consideration' within this land use zoning, although any associated 'takeaway' component would have to be ancillary to same. Regrettably, no further details have been provided as regards the specific nature of this aspect of the wider development proposal, however, it would be possible to address any potential concerns as regards any 'takeaway' component by way of condition.

9.1.6: The Remainder of the Proposed Development:

9.1.6.1 In respect of the remaining aspects of the proposed development, including the demolition of the existing office building and the internal alterations to the layout of Unit Nos. 2 and 3 within the Countess Shopping Centre, these works are relatively minor and do not give rise to any significant land use implications.

9.2 Impact on the Amenity of Neighbouring Properties:

9.2.1 In its decision to refuse permission for the construction of the drive-through restaurant and the retail / residential building, it is apparent that the Planning Authority had particular concerns with regard to the potential detrimental impact of the foregoing elements on the amenity of neighbouring properties. Accordingly, I propose to focus my assessment on these aspects of the subject proposal as follows:

9.2.2 The Proposed Drive-Through Restaurant:

9.2.2.1 Whilst I would acknowledge that the applicant has submitted a revised site layout plan in response to the request for further information issued by the Planning Authority which has sought to reposition the proposed drive-through

restaurant further southwards away from the neighbouring guesthouse to the immediate west, having regard to the site context, with particular reference to the continuing proximity of the proposed drive-through restaurant to nearby housing and overnight guest accommodation, in addition to the zoning of those lands to the immediate west of the revised siting which are zoned as *'Existing Residential'* in the Killarney Town Development Plan, 2009, it is my opinion that given the nature of this aspect of the wider development proposal (as outlined elsewhere in this report), which will include for a significant takeaway element, the development of a drive-through restaurant at this location would be unacceptable due to the late-night noise and general disturbance typically associated with such uses and the need to protect the residential amenity of neighbouring properties.

9.2.3 The Proposed Retail / Residential Building:

9.2.3.1 From a review of the amended site layout plan submitted in response to the request for further information issued by the Planning Authority, it is clear that the rear elevation of the proposed apartment block will be positioned 4.5m from the western site boundary and that the first, second and third floor windows within this façade will have unobstructed views directly over the adjacent property to the immediate west. Therefore, it is my opinion that the proximity of this aspect of the proposed development to the site boundary is such that the achievement of reasonable separation, particularly in the case of any future residential / mixed-use development on the adjacent lands (which have been zoned as 'Town Centre'), would require that any new buildings on those lands be set back a significant distance from the shared site boundary thereby compromising the realisation of the full development potential of those lands. In effect, the overall design and positioning of the proposed apartment block relative to the undeveloped lands to the immediate west would unacceptably impact on the development potential of those lands by necessitating any future development on same to be set back an adequate distance from the subject apartments so as to avoid any consequent loss of amenity to either the occupants of the proposed units or any development on the neighbouring lands. Therefore, I would recommend that this aspect of the proposal be omitted from the overall development and permission refused for same accordingly.

9.2.3.2 In addition to the foregoing, I would also advise the Board that the planning application lodged on those lands to the immediate west of the proposed apartment units under PA Ref. No. 16335, which sought permission to develop a visitor and conference centre with ancillary cafes and restaurants etc., has since been withdrawn and thus consideration must be given to the wider development potential of those lands. Furthermore, I would suggest that there

are no obvious or insurmountable constraints on site which would prohibit the development of an amended proposal which would serve to provide for adequate separation from the neighbouring lands or otherwise take due cognisance of the need to preserve the development potential and amenity of same.

9.2.3.3 With regard to the potential for the proposed balcony areas to give rise to the overlooking of nearby residences with an associated loss of privacy, it is clear that no such concerns arise as regards those dwelling houses located further east due to the considerable separation distances involved, however, I note that the Planning Authority has raised concerns in relation to the possible overlooking of those properties to the north / northwest. Whilst I would concede that there may be some degree of oblique overlooking from the northern aspects of the proposed balcony areas, I would suggest that this matter could be addressed by way of condition through the provision of suitable screening along the northern elevation of each of the northernmost balcony areas.

9.2.3.4 In relation to the overall appropriateness of the design and height of the proposed four-storey construction, given the extent of the wider site area, I would not preclude the possibility of a suitably designed construction on site exceeding the typical two-storey pattern of development in the surrounding area, however, with respect to the subject proposal and its implications for the future development of the adjacent lands to the immediate west, I would concur with the Planning Authority that the submitted design is not an appropriate design response to the development of the site.

9.3 Traffic Implications:

9.3.1 At present, vehicular access to the wider Countess Shopping Centre can be obtained from both Park Road and Countess Road and is available via a number of poorly defined access / egress points, several of which are in particularly close proximity to the heavily-trafficked junction at the Deerpark Roundabout. Indeed, a considerable extent of the existing roadside frontage of the Countess Shopping Centre onto both Park Road and Countess Road can already accommodate direct vehicular access from the public road. In addition, a further separate vehicular access onto Park Road serves the existing office building proposed for demolition. In this respect I would also advise the Board that Park Road (the R876 Regional Road) is a key route into the town centre from the N22 Cork - Killarney Road with further traffic volumes utilising the heavily trafficked roundabout adjacent to the application site in order to access the Deerpark Retail Park to the north.

9.3.2 Having conducted a site inspection, and following a review of the available information, including the Traffic and Transport Assessment submitted by the applicant in response to a request for further information, in my opinion, it is clear that there is a considerable need to regularise traffic flows through both the application site and the wider Countess Shopping Centre complex. In this respect I note that the subject proposal (as detailed in the response to the request for further information) aims to provide for improved traffic management on site through the closure of the existing entrance arrangement serving the office building proposed for demolition, the provision of a clearly defined entrance / exit point from Park Road to serve the wider site area, the provision of a second entrance only point from Park Road to serve a one-way traffic flow through the proposed service station, the closure of an existing direct access to the wider Countess Shopping Centre from the Deerpark roundabout, and the provision of a newly defined entrance / exit point onto Countess Road. Further works intended to accommodate the free-flow of traffic include the delineation of defined circulatory routes throughout the site and various improvements to the pedestrian footpath network alongside the public road. On balance, I would accept that the foregoing works will generally serve to facilitate improved access and traffic flows through the application site, however, I would advise the Board that there would appear to be difficulties as regards the proposal to close the existing direct access from the roundabout given that this entrance / exit arrangement is outside of the ownership of the applicant and that there would also appear to be issues pertaining to same in terms of non-compliance with the terms and conditions of a previous grant of planning permission. Whilst I would acknowledge the applicant's assertions with regard to the closure of the aforementioned access, it must be emphasised that the Board has no function with regard to the issue of enforcement and that it would not be appropriate for the Board to attempt to impose any particular requirement pertaining to third party lands without the consent of the relevant landowner (*N.B.* The Board is further advised that the applicant is presently engaged in legal proceedings against the Local Authority with regard to the implementation of a traffic management plan for the area which will include consideration of the aforementioned access onto the roundabout).

9.3.3 Notwithstanding the foregoing, I would have serious reservations as regards the traffic impact of the proposed service station alongside the heavily trafficked Park Road. In this regard, I would have particular concerns that the proposed access arrangement from Park Road could potentially result in increased traffic congestion and the obstruction of road users due to the limited queuing space available on site and the absence of any dedicated right-hand turning lane into the site from Park Road with the result that traffic waiting to

enter the premises will be forced to queue along the public road. Furthermore, the proximity of the pump islands etc. to the public road and the confined nature of the site area forward of the existing shopping centre is likely to impinge on traffic movements through the forecourt area whilst the exit route from the northernmost dispensing lane will necessitate vehicles to perform an undesirable turning manoeuvre within the confines of the site in order to achieve a satisfactory position for subsequent egress onto Park Road. It is also notable that no details have been provided of the fuel delivery arrangements such as an auto-track analysis of HGV movements to and from the public road. Accordingly, I would concur with the Planning Authority that the construction of the proposed filling station would be likely to give rise to a traffic hazard and thus should be omitted from the wider development proposal.

9.4 Appropriate Assessment:

9.4.1 From a review of the available mapping, including those contained in the Killarney Town Development Plan, 2009 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is not located within any Natura 2000 designation, although it is situated approximately 830m north of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365) and c. 950m east of the Killarney National Park Special Protection Area (Site Code: 004038). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 9: '*Natural Heritage, Biodiversity & Conservation*' of the Development Plan, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on same. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

9.4.2 Having reviewed the available information, including the screening exercise undertaken by the Planning Authority in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that in light of the nature and scale of the development proposed, the availability of public services, the nature of the receiving environment, and the separation

distance between the lands in question and the nearest European sites, no appropriate assessment issues arise and that the proposed development would not be likely to have any significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.5 Other Issues:

9.5.1 Procedural Issues:

9.5.1.1 With regard to the assertion in the grounds of appeal that the subject application has not been assessed in an impartial and unbiased manner by the Planning Authority, in my opinion, the consideration of such matters is beyond the remit of this appeal and is it not the responsibility of the Board to adjudicate on same. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application and, therefore, I do not propose to comment further on this issue other than to state that the Planning Authority's actions have not infringed the applicant's right of appeal.

9.5.2 The Requirement for a Special Development Contribution:

9.5.2.1 Condition No. 2 of the notification of the decision to grant permission as issued by the Planning Authority requires the payment of a special development contribution in the amount of €50,000 towards the cost of improvements to the public footpath network in order to facilitate the proposed development. In this respect I would advise the Board that the imposition of this condition appears to have been derived from the recommendations of the final report compiled by the Operations, Health and Safety Dept. of the Local Authority, however, it is regrettable that no further details are available as to the specific nature of those works towards which the contribution will be applied, although it is notable that the applicant has actually suggested that a 'special levy' could be imposed by the Local Authority towards the closure of an existing entrance / exit onto the adjacent roundabout and the associated construction of a 0.6m high wall. In this respect I would refer the Board to Section 48(2)(c) of the Act which states that Planning Authorities may require the payment of a special development contribution in respect of a particular development where specified exceptional costs not covered by the General Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. By way of further clarification, it should be noted that Paragraph 7.12 of the *'Development Management, Guidelines for Planning Authorities, 2007'* states the following:

“special contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of Section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis of the calculation, including how it is apportioned to the particular development”.

9.5.2.2 Therefore, on the basis of the foregoing, it is necessary to consider whether or not the special development contribution as imposed complies with the requirements of Section 48(2)(c) of the Act.

9.5.2.3 From a review of the available information, it is apparent that the special development contribution was imposed on the recommendation of the Operations, Health and Safety Dept. of the Local Authority and that it is intended to contribute towards certain unspecified improvements to the public footpath network, however, whilst I would acknowledge the merits in seeking to repair or improve certain aspects of the public footpath in the vicinity of the application site, it is unclear how any such works could be characterised as exceptional or how they would otherwise give rise to specific or unique considerations.

9.5.2.4 Indeed, I would suggest that it would be reasonable to conclude that any repair works to the public footpath network would simply amount to routine maintenance which would be covered by the adopted Section 48 Development Contribution Scheme and thus could not be considered to give rise to specific exceptional costs, particularly as any such repair works would be of benefit to the wider community. Similarly, any general improvements to the public footpath network are also likely to be covered by the aforementioned Scheme.

9.5.2.5 Furthermore, notwithstanding that the works in question cannot be considered to involve ‘specific exceptional costs’, it is necessary to review the apportionment of the costs associated with same relative to the subject proposal. In this respect the identification of the works is key to the determination of the expenditure involved and to allow for a clear basis for the calculation, including how the monies would be apportioned to a particular development. In the absence of these details it would be impossible for the applicant to calculate, in

the future, if a refund would be payable should the works not commence or be partially completed within the specified timeframes. In this regard, it is regrettable that no clear details have been provided by the Planning Authority in respect of the calculation of the costs associated with the proposed road improvement works or how same has been apportioned to the subject development.

9.5.2.6 At this point it is of particular relevance to note that whilst the final report of the Operations, Health and Safety Dept. of the Local Authority recommends the imposition of a special development contribution in the amount of €50,000 towards improvement to the public footpath network in order to facilitate the proposed development, the calculation of that figure seems to be based on the approval of the entirety of the development proposal, with the exception of the proposed service station element. Accordingly, it would appear that no account has been taken in the final imposition of the condition as regards the omission (refusal) of those further elements of the overall development proposal i.e. the proposed drive-through restaurant and the retail / residential building. In effect, the proposal as permitted by the Planning Authority is generally limited to the change of use of certain units within the existing Countess Shopping Centre and the amount of the special development contribution would not seem to have been amended to reflect same.

9.5.2.7 Therefore, on the basis of the foregoing, in my opinion, it has not been established that the works referenced in Condition No. 2 give rise to 'specific exceptional costs' in accordance with the relevant legislative requirements. Similarly, I am not satisfied that the calculation of the special development contribution has been correctly apportioned to that element of the development proposal which was ultimately granted permission by the Planning Authority. Accordingly, I do not consider that Condition No. 2 as imposed by the Planning Authority complies with the requirements of Section 48(2)(c) of the Act and thus it should be omitted from any decision to grant permission.

9.5.3 The Overall Design and Layout of the Proposed Apartment Units:

9.5.3.1 In relation to the construction of the proposed retail / residential block, it is necessary to consider the detailed design of same having regard to the requirements of both the Development Plan and the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015*'. In this respect it is of particular relevance to note that where specific planning policy requirements are stated in the Guidelines, the Minister intends that such requirements take precedence over the policies and objectives of development plans. Indeed, Section 2.10 of the Guidelines states that it is a

specific planning policy requirement that statutory development plans do not set target minimum average floor areas or requirements for additional communal facilities (e.g. common rooms or gyms) or any other aspect of apartment design that do not accord with the requirements set out in the guidelines. Therefore, in accordance with Section 1.7 of the Guidelines I propose to assess the subject proposal as regards compliance with the relevant planning policy requirements set out in the Guidelines pertaining to the following matters:

- Internal space standards for different types of apartments, including studio apartments
- Dual aspect ratios
- Floor to ceiling height
- Apartments to stair / lift core ratios
- Storage spaces
- Amenity spaces including balconies/patios
- Room dimensions for certain rooms

9.5.3.2 Internal Space Standards / Apartment Floor Area:

9.5.3.2.1 It is a specific planning policy requirement of the guidelines that the minimum apartment floor areas previously specified in the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007'* continue to apply and these are as follows:

- 1 bedroom apartment Minimum 45m²
- 2 bedroom apartment Minimum 73m²
- 3 bedroom apartment Minimum 90m²

9.5.3.2.2 In this respect I would advise the Board that each of the 12 No. two-bedroom apartments proposed has a stated floor area of 107m² and thus exceeds the minimum requirements of the Guidelines. Similarly, the internal room dimensions adhere to the specified standards.

9.5.3.3 Dual Aspect Ratios:

9.5.3.3.1 The amount of sunlight reaching an apartment significantly affects the amenity of its occupants and therefore it is a specific planning policy requirement of the Guidelines that in urban locations the minimum number of dual aspect apartments to be provided in any single apartment scheme will be 50%, although in certain circumstances such as on inner urban sites or near to city or town centres, the foregoing requirement may be reduced to an absolute minimum of

33% whilst a further relaxation may be permissible where it is proposed to refurbish an older building in a constrained urban context.

9.5.3.3.2 All of the proposed apartment units are dual-aspect and, therefore, the proposed development accords with this specific requirement of the Guidelines.

9.5.3.4 Floor to Ceiling Height:

9.5.3.4.1 The Guidelines state that floor-to-ceiling height affects the internal amenities of apartments (in terms of sunlight / daylight, storage space, and ventilation) and that this is of most significance at ground level where the potential for overshadowing is greatest, although it is also noted that ground level floor to ceiling height will also influence the future adaptability of individual apartments for potential alternative uses, depending on location. It is also stated that the minimum floor to ceiling heights must accord with the Building Regulations requirement of 2.4m.

9.5.3.4.2 From a review of the submitted drawings, it is apparent that the floor to ceiling height of each of the proposed apartment units is 2.575m and thus the submitted design accords with the Guideline requirements.

9.5.3.5 Apartments to Stair / Lift Core Ratios:

9.5.3.5.1 Given the limited scale of the development proposed, the subject proposal satisfies the requirements of the Guidelines in this regard.

9.5.3.6 Storage Spaces:

9.5.3.6.1 Internal Storage:

9.5.3.6.1.1 The Guidelines state that new apartment developments should include adequate provision for general storage and utility requirements in order to accommodate household utility functions such as clothes washing and the storage of bulky personal or household items. In this regard I would refer the Board to the specific planning policy requirements for minimum storage areas as appended to the Guidelines which state that the minimum storage space requirement for a two-bedroom apartment is 6m². Notably, this storage provision is to be in addition to kitchen presses and bedroom furniture (although it may be partly provided within these rooms provided it is also in addition to the minimum aggregate living/dining/kitchen or bedroom floor areas). The Guidelines also state that no individual storage room within an apartment should exceed 3.5 square metres.

9.5.3.6.1.2 From a review of the submitted drawings, it is apparent that the overall floor area of each of the proposed apartment units considerably exceeds the minimum requirement of the Guidelines and thus it would seem reasonable to conclude that adequate storage space has been provided within each apartment. Indeed, each unit has been provided with c. 6m² of dedicated storage space (as detailed on the submitted floor plans) and thus the submitted proposal satisfies the minimum specific planning policy requirements of the Guidelines as regards the provision of internal storage space.

9.5.3.6.2 Refuse Storage:

The proposed development includes for the provision of an external communal bin storage area alongside the western site boundary. This area will be secured and will not be overtly visible from any public area. In principle, the inclusion of such a facility is generally satisfactory, however, I would have concerns that insufficient space has been allowed for the communal storage area to satisfy the three-bin system for the collection of mixed dry recyclables, organic waste and residual waste (*N.B.* Within the apartments, there should also be adequate provision for the temporary storage of segregated materials prior to deposition in communal waste storage).

9.5.3.7 Amenity Spaces (including balconies / patios):

9.5.3.7.1 Private Amenity Space:

9.5.3.7.1.1 It is a specific planning policy requirement of the Guidelines that adequate private amenity space be provided in the form of gardens or patios / terraces for ground floor apartments and balconies at upper levels. In this respect I would advise the Board that a two-bedroom apartment is required to be provided with a minimum floor area of 7m² of private amenity space whilst consideration must also be given to certain qualitative criteria including the privacy and security of the space in question in addition to the need to optimise solar orientation and to minimise the potential for overshadowing and overlooking.

9.5.3.7.1.2 Each of the proposed apartment units has been provided with an east-facing balcony which extends to 7.125m² in floor area with the access to same available from the dining area. In my opinion, this provision is acceptable and exceeds the minimum requirements of the Guidelines.

9.5.3.7.2 Communal Amenity Space & Children's Play:

9.5.3.7.2.1 The Guidelines state that the provision and proper future maintenance of well-designed communal amenity space is critical in meeting the

amenity needs of residents, with a particular emphasis being placed on the importance of accessible, secure and usable outdoor space for families with young children and for less mobile older people, and in this respect there is a requirement for a minimum of 7m² of communal amenity space to be provided per two-bedroom apartment which would equate to the provision of a cumulative total of 84m² of amenity area in the case of the subject proposal.

9.5.3.7.2.2 Whilst neither the site layout plan which accompanied the initial planning application or the amended details provided in response to the request for further information included for any dedicated communal amenity space to serve the needs of future residents of the proposed apartment units, a revised site plan has been submitted with the grounds of appeal which details such an area within the south-western corner of the site. This space comprises a lawn area with associated paving and bench seating and exceeds the minimum area requirements specified by the Guidelines, however, it is regrettable that the positioning of this space cannot avail of any passive supervision from the proposed apartment units.

9.5.3.8 Room Dimensions for Certain Rooms:

9.5.3.8.1 Having reviewed the submitted drawings, I am satisfied that the overall design of the proposed apartment units accords with the required minimum floor areas and standards (including the dimensions of certain rooms) as appended to the Guidelines.

9.5.3.9 Other Design Considerations:

9.5.3.9.1 Security Considerations:

9.5.3.9.1.1 It is a requirement of the Guidelines that apartment design should provide occupants and their visitors with a sense of safety and security by ensuring the natural surveillance of streets, open spaces, play areas and any surface bicycle or car parking. In this respect it should be noted that all of the proposed apartment units will be accessible from the front of the building thereby ensuring a reasonable degree of supervision and security, however, I would reiterate my earlier concerns as regards the lack of supervision of the proposed communal amenity area.

9.5.3.9.2 Access and Services:

9.5.3.9.2.1 Given the limited scale of the development proposed and the requirements of Part M of the Building Regulations, it is my opinion that the proposed access arrangements as detailed on the submitted drawings are acceptable in principle.

9.5.3.9.3 Communal Rooms / Services:

9.5.3.9.3.1 The 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015' state that the provision of communal or other facilities within apartment schemes should be subject to negotiation and agreement with the developer as part of the planning process and that they should not generally be imposed as requirements by the planning authority in the absence of proposals from and / or the agreement of an applicant.

9.5.3.10 Overall Design of the Proposed Apartment Scheme:

9.5.3.10.1 On the basis of the foregoing, whilst I would acknowledge that certain aspects of the proposed apartment design do not strictly accord with the minimum requirements of the Guidelines (i.e. the siting of the proposed communal open space and the likely shortfall in the refuse storage arrangements), I would suggest that these deficiencies could perhaps be addressed by way of condition in the event of a grant of permission.

10.0 RECOMMENDATION

Having considered the contents of the application, the decision of the planning authority, the planning history of the site, the grounds of appeal and my assessment of the planning issues, I recommend that a split decision be issued as follows:

GRANT permission for 4) Change use of existing shop units in Countess Shopping Centre as follows a) Unit nr 1 from financial services to retail; b) Unit nr 4 from financial services to restaurant 5) Alter layout of units 2 and 3, as detailed on plans; 6) Construct car parking, traffic control measures, drainage and all ancillary works, for the reasons and considerations, and subject to the conditions, marked (1) hereunder.

REFUSE permission to 1) Demolish existing office building and construct a drive through restaurant; 2) Construct service station and canopy to front of existing supermarket; and 3) Construct building containing 4 nr shop units and 12 nr 2 bedroom apartments; based on the reasons and considerations marked (2) hereunder.

Reasons and Considerations (1):

Having regard to the established use of the site for retail / commercial purposes, to the zoning objectives for the site as set out in the current Development Plan for the area, and to the nature and limited scale 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 amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and 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 7th day of September, 2016 and by the further plans and particulars received by An Bord Pleanála on the 27th day of October, 2017, 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 change of use of Unit No. 4 from financial services to restaurant shall operate predominantly as a restaurant, and any associated take-away facility shall remain ancillary to the main restaurant use. Details of the occupancy and operation of the unit, including detailed floor plans indicating the layout of the proposed development, public seating areas, service areas and any external plants/vents/machinery and food preparation areas, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the amenities of the area.

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3. Prior to the commencement of development, a scheme for the effective control of fumes and odours generated by the proposed restaurant shall be submitted to the planning authority for written approval. Furthermore, the developer shall submit details regarding ventilation systems, ducting and route of pipework to discharge point for written agreement with the planning authority.

Reason: In the interest of public health and in order to safeguard the residential amenities of properties in the vicinity.

4. Litter in the vicinity of the restaurant premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

5. 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 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.

6. 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.

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 interest of amenity and of traffic and pedestrian safety

8. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

Reasons and Considerations (2):

1. Having regard to the site location alongside the heavily trafficked R876 Regional Road and its proximity to a roundabout and to the entrance to a shopping centre, the nature and scale of the proposed service station, to the limited area and restricted access and manoeuvring arrangements (particularly for fuel delivery vehicles) associated with the site, the Board is not satisfied that the proposed service station would not interfere with the safety and free flow of traffic on the public road and, thereby, 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.
2. Having regard to the proximity of the proposed apartment units to the adjoining western site boundary, it is considered that the proposed development would adversely affect the development potential of adjoining lands, which are zoned for town centre uses in the current Development Plan for the area, and would thereby seriously injure the amenities, and depreciate the value, of property in the vicinity of the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed drive-through restaurant, by reason of its siting, nature and the noise and general disturbance which would be generated, would seriously injure the residential amenities of property in

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

Signed: _____

Robert Speer
Inspectorate

Date: _____