



An  
Bord  
Pleanála

## Inspector's Report ABP 306401-20

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<b>Development</b>	Demolition of existing industrial buildings & associated infrastructure Construct 25 no. 2-storey townhouses, landscaping, a new pedestrian entrance from O'Kelly's Villas and Bishop Moynihan Cres.
<b>Location</b>	Killarney Dairies Site, Kilcoolaght, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	19/64
<b>Applicant</b>	Killark Residential Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant First party against condition
<b>Appellants</b>	(1) Ann Kelliher (2) Pat & Mary Carmody (3) Killark Residential Ltd.

**Observers**

None

**Date of Site Inspection**

16<sup>th</sup> March 2020

**Inspector**

Mary Kennelly

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## 1.0 Site Location and Description

- 1.1.1. The site is located in the townland of Kilcoolaght in Killarney town, in a suburban area less than 100m to the north of the main shopping area. It is situated to the east of Rock Road, between the N22 - Killarney Bypass Road and New Road/High Street junction. It is a large brownfield site which is situated in the middle of a dense housing estate with the rear gardens of dwelling houses backing onto narrow lanes which encircle the site. It is centrally located being within easy walking distance of the town centre and many amenities including Fitzgerald Stadium and the National Park.
- 1.1.2. The site, which is roughly rectangular in shape, has a stated area of 0.41 hectares. This was the former Dawn Dairies site. It is enclosed by high masonry walls on all boundaries, with a vehicular entrance at the north-eastern corner. The western boundary is with the lane to the rear of houses fronting Rock Road. These are generally large houses on generous plots, which are mainly in residential use but many are in use as B&Bs. The lane alongside the northern boundary serves the rear gardens of a dense terrace of 10 houses fronting O'Kelly's Villas (Nos. 1-10). Similarly, the eastern boundary lane serves 10 properties fronting onto Marian Terrace (two blocks of five, Nos. 51-60 inclusive), with a further three attached properties (Nos. 34, 35, 36). The laneway to the east is very narrow with a row of evergreen trees at the northern end. The southern boundary is with a short lane to the rear of Nos. 1-5 Bishop Moynihan's Crescent.
- 1.1.3. The site is accessed from the northeast via St. Brendan's Place and St. Marian's Terrace. There is a wide road leading to the entrance which has perpendicular parking alongside the side boundary of No. 60 Marian Terrace. There are two industrial buildings on the site, one in the centre of the site and the other is located adjacent to the northern boundary. The site is vacant. There is an ESB substation on the south-western corner of the site.

## 2.0 Proposed Development

- 2.1.1. The proposal entails the construction of 25 two-storey dwelling units and the demolition of the existing buildings on site. These would be arranged in two main blocks (A and B) with one smaller block (C). It is proposed to utilise the existing entrance to the site and to retain for the most part, boundary walls enclosing the site. The housing units would therefore front onto an internal road which is a T-shaped cul-de-sac, with the rear gardens backing onto the retained boundary walls. It is proposed to break through the masonry wall at the south-western end of the site where it is proposed to provide a pedestrian entrance. To the south of the entrance, it is proposed to locate two attached houses which would front directly onto the lane with windows overlooking the lane. These houses would form one of two 'book-ends' at either end of a row of 7 attached houses, (Block A), along the southern boundary. Block B would back onto the western boundary and would have a similar composition. Block C consists of 2 pairs of semi-detached houses, back to back, adjacent to the eastern boundary.
- 2.1.2. The site would have two areas of public open/shared amenity space. Each one would be located just inside the main entrance, one to the south along the eastern boundary (200m<sup>2</sup>) and the other alongside the northern boundary (84m<sup>2</sup>). It is proposed to fell the coniferous trees along the northern end of the eastern boundary and to replace them with trees of native species. The earthen bank on which the conifers presently stand will be removed and replaced with a 1.5m high retaining wall, with a 2m high blockwork wall over.
- 2.1.3. The mix and size of the proposed houses comprise 10 two-bedroomed units, 14 three bedroomed units and 1 four bedroomed unit. The density of the proposed development is c.60 units/ha. Each house would be provided with one parking bay which would be divided by beech hedging between the bays. Four visitor parking spaces would be provided. Each house would have a minimum of 48m<sup>2</sup> private amenity space. The houses have been designed with steep pitched roofs and narrow gables. The proposed materials comprise a mixture of brick and smooth plaster finish, with roofs of slate or fibre cement. Two units (Nos. 12 and 13, which are 2-bedroomed units) will be transferred as social housing

- 2.1.4. It is proposed that the development be served by a new 100mm watermain and a 150mm foul sewer which will connect to the public water supply and to the public wastewater system, respectively. The surface water drainage system will discharge to the combined sewer at the southwestern boundary

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission for the demolition of the existing buildings subject to 12 conditions and for the construction of 25 townhouses subject to a further 28 conditions including:

**Condition 7:** Carry out an evaluation and quantification of demolition waste and a waste management and disposal plan to be submitted to P.A. for agreement prior to commencement of development on the site.

**Condition 8:** Retention of services of competent person to carry out final survey re Asbestos Containing Material, PCBs and any other hazardous material and report to be forwarded to P.A. prior to commencement of development.

**Condition 9:** Retention of qualified and experienced asbestos-removal contractor.

**Condition 14:** Special contribution of €224,000.00 in respect of public lighting and roads infrastructure consisting of the following

- Resurfacing vehicular entrance and provision of public footpath into development
- Resurfacing eastern laneway serving the development
- Upgrading western laneway as a shared space for pedestrians and vehicles
- Upgrading and provision of 16 public lights and associated ducting to serve the development.

**Condition 15:** Development Contribution of €63,897.60 in accordance with the GDCCS.

**Condition 16:** payment of bond.

**Condition 19:** Requirements to enter connection agreement with IW in respect of provision of water and sewerage and no development to commence until connection agreement signed.

**Condition 32:** No overnight commercial guest accommodation.

**Condition 34:** the first-floor bathroom and landing windows to be fitted with frosted/opaque glass.

**Condition 40:** Part V.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's report dated 22/03/19 pointed out that the site is zoned "New/Proposed Residential" and that Variation 4 of the Development Plan encourages development of existing built-up areas such as this one, which is close to the town centre. It was noted that the former Dawn Dairies site was a busy industrial site for over 50 years with large trucks delivering milk for processing and delivery trucks taking processed milk products away for distribution and sale. The enclosed nature of the site, which was necessitated by the industrial processes, has had the effect of cutting off pedestrian linkages around the site, where the laneways connect the residential area to the town centre. It was considered that the proposal was acceptable in principle, that the density was appropriate and that the provision of pedestrian linkage through the site and the opening up the site with windows providing passive surveillance would be a positive development. It was further considered that the parking provision was in accordance with national policy for centrally located sites and that the level of traffic and disruption would be minimal compared with the previous use of the site.

Further information was required, however, in respect of a number of issues including waste management, drainage design, sewerage, a Road Safety Audit, universal access and Part V proposals. In addition, it was noted that there is a substantial difference in levels between the site and the lane to the east of the site, where conifer trees are to be felled and the boundary wall to be replaced, and further information was requested in respect of the nature of the boundary treatment and the species of trees to be planted. The FI request also pointed out that asbestos was



likely to be present and that the construction and demolition plan would need to take account of this.

A **grant of permission** subject to conditions was recommended.

### 3.3. **Other Technical Reports**

- 3.3.1. **Archaeologist (11/02/19)** – there are no recorded monuments in proximity to the proposed development. The site has previously been disturbed. No mitigation required.
- 3.3.2. **Estates Engineer's Report (13/02/19)** – The Estates Engineer requested various additional details including designation of visitor parking/disabled parking, provision of services, dished footpaths, stop signs and road markings etc. It was also pointed out that the entrance piers and wing walls at the existing entrance restrict sightlines and that there is a gap in the footpath network to the nearest public footpath. A levy would be required for this and for road delineation at Marian Terrace and for public lighting.
- 3.3.3. **Biodiversity Officer (7/03/19)** – It is noted that the development will be connected to the public water supply and WWTP, and that it is a considerable distance from the Killarney National Park, MacGillycuddy Reeks and Caragh River Catchment cSAC. It was considered that the proposed development is unlikely to result in any significant effects on the qualifying interests of the SAC.

### 3.4. **Prescribed Bodies**

- 3.4.1. **Irish Water (6/03/19)** requested further information. The existing 6-inch sewer should be upgraded to a 225mm sewer and the storm water should not enter the existing 6-inch sewer.

### 3.5. **Third Party Observations**

Objections received by the planning authority are on file for the Board's information. A letter from Danny Healy Rae T.D. is also included in the submissions. The issues raised are comparable to those set out in the 3<sup>rd</sup> Party appeals and observations received and summarised in section 6 below. The concerns raised related to the following issues

- Housing density above national standards and out of context with area.
- Insufficient car parking spaces.
- Inadequate landscape buffer strip on western boundary and proximity of Units 12/13 to laneway is excessive. Overlooking from these dwellings unacceptable.
- Laneways too narrow and traffic generation too great. There are cars parked adjacent to the entrance to the site.
- Pedestrian facilities inadequate. Location of pedestrian entry/exit point unacceptable.
- Inadequate provision of amenities/ open space.

### 3.6. Further Information response 18<sup>th</sup> September 2019

3.6.1. Following a FI request on 22<sup>nd</sup> March 2019 and the grant of a six-month extension of time to respond, FI was submitted on 18/09/19. The response may be summarised as follows:

1. **Waste management** – a Refurbishment/Demolition Asbestos Survey Report was commissioned and is enclosed. The presence of asbestos was confirmed, and a plan was proposed for its safe removal and disposal in accordance with Health and Safety requirements. A detailed Waste Management Plan for construction and demolition waste was also provided as was a Contamination Site Assessment Report. It was confirmed that the soil across the site is uncontaminated apart from the area around the diesel tank.
2. **Sewer and storm water infrastructure** – proposal to upgrade part of the 150mm combined public sewer to a 225mm pipeline set out in Water Services Design Statement submitted with FI and it is confirmed that IW agrees that connection can be facilitated.
3. **Road safety** – Road Safety Audit submitted which relate to details of the pedestrian entrance, pedestrian access route, parking layout and visibility, disabled parking provision and lighting lux levels.

4. **Stormwater drainage design** – the stormwater pipelines have been redesigned with oversized pipes and it will now be discharged into the combined public sewer with a 20% safety factor for climate change.
5. **Boundary treatment** – the eastern boundary will consist of a 465mm high retaining wall to the south-east rising to 1.8m high to the north-east along the length of the boundary. There will be a raised planter and clipped beech hedge along the inside of the wall alongside the POS. Above the retaining wall, there will be a 1.5m high blockwork wall with concrete capping forming the boundary to the public road. At the entrance to the site, this will change to a 2m high brickwork wall and piers, together with entrance signage. Revised Drg. 31006.
6. **Bin storage** – dedicated individual bin storage for each unit will be provided as follows. Firstly, 8 no. homes will have a screened private bin storage area at their entrance, 5 no. homes will have a screened timber bin store in their front gardens and bins will be kept in rear gardens of remaining houses, (Drawing 31008).
7. **Universal access** – revised drawing 31001 Site Plan shows universal design. A Universal Access Report is also enclosed.
8. **Part V** – Statement of Understanding enclosed with FI.
9. **Landscaping** – replacement trees for conifers would be of the Fastigiata variety of a native oak tree known as the Quercus robur 'Koster' which is a tall, upright pyramidal version of the Common Oak that is ideal for growing in tight spaces. It would also be planted along the southern boundary.

### 3.7. Clarification of Further Information

- 3.7.1. The P.A. required the submission of further details of clarification (11/10/19). These related to the design of the entrance in terms of addressing the potential for pedestrian/traffic conflict; clarification of Points 2.1-2.5 inclusive of the RSA, the length of the raised table, confirmation of IW agreement to discharge to the combined sewer and the set back of the North-western corner to provide increased lines of sight.

- 3.7.2. Clarification was submitted on 28<sup>th</sup> November 2019. Drawing No. 19663-5003 refers. This addressed the entrance to the site, the items identified in the RSA, the raised table (which has been removed), confirmation from IW regarding the acceptability of the proposed combined sewer improvement works and discharge, and revisions to the northwest corner. The latter involves the reduction of a section of the wall to 600mm adjacent to the entrance and the removal of a 2m section directly adjoining the entrance all together.
- 3.7.3. The Area Planner and the other technical reports were generally satisfied with the clarification of further information and permission was recommended subject to conditions.

## 4.0 Planning History

- 4.1.1. **09/205066** – permission granted to retain a 3.4m high replacement bunded diesel oil tank on the site.

## 5.0 Policy Context

### 5.1. National Planning Framework 2018

The NPF seeks to focus growth in cities, towns and villages with an overall aim of achieving higher densities than have been achieved to date.

**NP Objective 11** states that there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages.

**NP Objective 33** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

**NP Objective 35** seeks to increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of old buildings, infill development schemes, area or site-based regeneration and increased heights.

## 5.2. **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)**

- 5.2.1. Increasing populations in larger towns where the range of employment, recreational, commercial and retail uses are present can help to curtail travel demand and provide for the greatest potential for the creation of sustainable patterns of travel. This can assist in regeneration, make more intensive use of existing infrastructure, support local services and employment encourage provision of affordable housing and facilitate sustainable transport modes.
- 5.2.2. In terms of densities, there should be no upper limit on the number of dwellings subject to certain safeguards and 'brownfield' sites should be promoted for redevelopment at higher densities subject to such safeguards. These include compliance with policies and standards on public and private open space, height, massing, plot ratios and site coverage in the local area plans/development plans for the area. In addition, good internal space standards should be achieved and undue adverse impact on the amenities of existing/future adjoining neighbours should be avoided. In residential areas whose character is established by their density or architectural form, a balance must be struck between the reasonable protection of the established character and the need to provide residential infill.

## 5.3. **Kerry County Development Plan 2014**

**Chapter 3 – Housing** – sets out the housing policies and objectives including the following:

**HS-2** - Facilitate the housing needs of people in their local communities through actively providing/assisting the provision of housing in settlements.

**HS-4** - Have regard to and promote increased residential densities in the towns and other appropriate locations in accordance with the 'Sustainable Residential Development in Urban Areas' Guidelines 2009 (DoEHLG).

**US-1** – Ensure that future housing in urban areas in the County is located on lands zoned for residential use. In towns and villages residential development shall be located in town/village centres or immediately adjacent to town/village centres, on serviced lands, and in accordance with the Development Guidance of this document.

**US-3** – Ensure that all new development within the County supports the achievement of sustainable residential communities. The Council will have regard to the provisions of the Guidelines on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual.

**US-4** – Promote development which prioritises walking, cycling and public transport use in a sustainable manner, both within individual developments and in the wider context of linking developments together and providing connections to the wider area, existing facilities and public transport nodes.

**US-7** – Ensure that all new urban development is of a high design quality and supports the achievement of successful urban spaces and sustainable communities.

**Chapter 13 – Development Management Standards** includes the following:-

**Infill Sites** – Infill development must have regard to the main adjoining existing uses, design features, building lines and heights, as well as the existence of any features such as trees, built and natural heritage and open spaces on the site or on adjoining sites. Proposals for infill development must demonstrate how they will integrate satisfactorily with the adjoining developments, without any loss of amenity.

**Building lines and private open space** – A minimum of 22 metres shall generally be provided between directly opposing first floor habitable rooms. This may be reduced subject to good design and the individual design requirements of the site where it can be demonstrated that residential amenity and adequate light is not compromised.

**Parking requirement** – one space per bedroom.

#### 5.4. **Killarney Town Development Plan 2009 – 2015 (as extended)**

Killarney Town Development Plan was extended by Variation 4, which was adopted in December 2018. This Variation replaces the zoning maps and many of the other maps of the original Development Plan. It also includes the population allocation and housing land requirement as contained in the Core Strategy of the Kerry County Development Plan 2014. It also addresses the Killarney Municipal District LAP 2018-2024, which was adopted at the same time, and several other planning issues.

In respect of residentially zoned lands, Variation 4 redesignates lands in Killarney from Residential Phase 1 & 2 to 'Residential' and is based on the sequential approach and lands with extant permissions. Revision 1 of this Variation designated lands as 'Residential' which relates to all lands which are centrally located within walking distance of the town centre.

The site is shown on the New Killarney Zoning Map A (Variation 4) as being located in an area zoned as 'New Proposed Residential' (R1) and is surrounded by lands which are zoned 'Existing Residential' (R2). Revision 6 replaced HSG-03-D with a revised HSG-03-C, which states –

Ensure that residential densities reflect the density of appropriate adjoining development. Higher densities will be considered in the town centre or within close proximity to the town centre.

The objective for Existing/Developed/Residential Areas is to protect and improve these areas and to provide facilities and amenities incidental to those areas.

Development Management Policy includes a minimum of 15% of total site area to be provided as public open space (12.13) and a minimum of 48m<sup>2</sup> private open space per dwelling unit. 12.26 and 12.28, respectively encourage redevelopment of infill sites and brownfield lands, particularly in close proximity to the town centre. Section 3.10.2 of the Plan (as varied) encourages the redevelopment of all backland, infill, vacant and derelict sites in the town and section 5.16.3 encourages brownfield development that will regenerate the core of the town.

## **5.5. Natural Heritage Designations**

Killarney National Park, Macgillicuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038) approx. 100m to the north.

## 6.0 The Appeal

### 6.1. Third party grounds of appeal

6.1.1. Two Third-Party Appeals have been received from Patrick & Mary Carmody (Rathmore House, Rock Road) and from Ann Kelliher (Camellia House, Rock Road).

The submissions can be summarised as follows:

- **Overdevelopment of site** – The density of development proposed is excessive and does not provide for sufficient open space. Thus, it would result in overdevelopment of the site.
- **Landscaping and boundary treatment** – It is submitted that the proposed trees to the rear of Units 2-10 should be continued along the full length of the lane and that the wall along the south-western boundary should be retained. The current proposal does not provide an adequate buffer zone.
- **Reduction in privacy and loss of amenity** – design and siting of the proposed units 10, 12 and 13 does not respect the amenities of existing adjacent housing in terms of overlooking and the amenities of the rear gardens of the houses fronting Rock Road. This is exacerbated by the topography of the area whereby the gradient falls from Marian Terrace to Rock road. Thus, the dwellings on Rock Road are at a lower level than the laneway and the site is at a higher level again.
- **Amenity of future residents** – the amenity of the future occupiers of Nos. 10-13 would be adversely affected by noise and toxic fumes from delivery lorries serving the rear accesses of the house on Rock Road.
- **Traffic impact** – The laneways are too narrow to accommodate an increase in pedestrian traffic in the area. It is noted that the proposed pedestrian entrance is located directly opposite existing entrances to the rear gardens of established houses on Rock Road. This will interfere with the ability to access these properties, especially in regard to deliveries of oil etc. An obstruction of the laneways, which happens regularly, would necessitate a very long alternative pedestrian route to the town.



- **Inadequate parking** – the provision of 29 parking spaces, only 4 of which are for visitors, is inadequate. This will give rise to overspill parking on the laneways and the adjoining streets which will interfere with pedestrian movement and safety along the laneways and create a traffic hazard.

## 6.2. First party appeal

- 6.2.1. The first party has appealed against Condition No. 14 which relates to a Special Contribution to be paid in respect of certain road works and public lighting. The appeal is made in respect of this condition only and it is sought that the appeal be dealt with under the provisions of Section 48(13) and Section 139 of the Planning and Development Act 2000, (as amended).
- 6.2.2. Condition 14 requires the payment of €224,000.00 in respect of improvement works which benefit the proposed development, in accordance with the provisions of Section 48(2)(c). The provisions of section 48(12)(b) and (c) of the Act shall apply in relation to payment of this special contribution. The payment requirement is broken down as follows:
1. Contribution towards the Roads Infrastructure which is adjacent to and serves this development – 100% contribution towards the cost of resurfacing the vehicular entrance and the provision of a public footpath to the development. Amount of contribution - €46,000
  2. Contribution towards the Roads Infrastructure which is adjacent to and serves this development – 100% contribution towards the cost of resurfacing eastern laneway which serves this development. Amount of contribution - €20,000.
  3. Contribution towards the Roads Infrastructure which is adjacent to and serves this development – 100% contribution towards the cost of upgrading western laneway which serves this development as a Shared Space for Pedestrians & Vehicles. Amount of contribution - €100,000.
  4. Contribution towards improvements to the public lighting which serves this development – 100% contribution towards the upgrading/providing 16 public lights and associated ducting to serve this development. Amount of contribution - €58,000.

Reason: It is considered reasonable that a special contribution be made in respect of specific exceptional costs to be incurred by the Planning Authority in respect of public infrastructure, which benefit the proposed development, but which are not covered by the Development Contribution Scheme.

### 6.2.3. Grounds of appeal

- **Not exceptional or specific** - The infrastructure and facilities for which the special contribution is required is neither exceptional nor specific to the development. The works are not specifically required to support the development and do not give rise to a specific exceptional cost to the L.A. not covered in the GDCS. The specific extent and exceptional nature of these works are not detailed in the P.A. decision.
- **Double charging** – the requirement for a special contribution towards road improvements and public lighting in addition to the levy required to be paid under the GDCS amounts to double-charging. A levy of €63,897.60 is required by condition 15 under the GDCS. This related to roads and transport infrastructure, which is defined as road projects, public lighting and flood relief works, and to community and amenity infrastructure, which includes cycle and walkway facilities. It is described as infrastructure that is “essential to realising the objectives of the Development Plan”. Works that will benefit from the collected contributions include provision of roads, traffic calming, parking spaces etc. It further identifies that benefitting works will include “implementation of Traffic Management Plans, Town Centre enhancement works and development of laneways”. The subject lands are zoned residential and hence enabling works to deliver the stated objective of developing the site for residential purposes were therefore foreseen and formed part of the GDCS.
- **Killarney Hub component of GDCS** – alongside the contribution for roads, transport, community and amenity facilities, the GDCS also requires a payment of €26,387.60 as an additional charge which arises from the desire to “prioritise the sustainable development of the linked hub towns of Tralee and Killarney” and to cater for the delivery of an increased level of supporting

infrastructure. It is considered that the improvements are well catered for by the required levies contained in the GDCS.

- **No basis for Special contribution in the General Development Management Guidelines for P.A.s (2007)** – it is essential that the basis for the calculation of the contribution is explained in the planning decision (7.12). Thus, it will be necessary to identify the nature and scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. No such justification is provided by the P.A. in the absence of such information, the developer has scoped and costed the works shown on Drg. No. 19663-5003 and these costs have been independently reviewed by KCK Chartered Quantity Surveyors, (enclosed).
- **The contributions levied by the L.A. do not accord with the principles of reasonableness or proportionality, having regard to the Development Contribution Guidelines for P.A.s 2013.** – no justification for apportionment of 100% of identified costs to the subject development. The works will also benefit other developments and/or other undeveloped lands in the vicinity.
- **Item 1 Resurfacing of vehicular entrance and provision of footpath into the development** – the benefit from resurfacing this public road will resolve existing pedestrian and vehicular conflict and will directly benefit the existing residents in Marian Terrace and O’Kelly’s Villas. The future residents will derive no benefit from the upgrading of the existing private parking area adjacent to the entrance, as they are reserved exclusively for residents of Marian Terrace. Thus, the works are neither exceptional nor specific to the proposed development. No details of the specified costs have been provided and these costs are considered to be disproportionate to an estimate of actual works required. The works have already been provided for in the GDCS and as such represent a double-charge.
- **Item 2 Resurfacing eastern laneway** – the laneway provides rear access to properties on Marian Terrace. There are no vehicular or pedestrian access points onto the laneway to/from the proposed development and natural desire lines are through the site to the southwest. Thus, the works are neither exceptional nor specific to the proposed development. A 100% contribution is

not justified, and it amounts to double-charging as it is provided for in the GDCS.

- **Item 3 Upgrading western laneway as a shared space for pedestrians and vehicles** – the requirement is ambiguous, inaccurate and not specifically related to the proposed development. The applicant had offered to resurface the area shaded blue (Drg. No. 19663-5003) along this lane in pre-decision discussions, as this area coincided with works required to upgrade Irish Water infrastructure to serve the development. However, there is no vehicular access onto this lane from the site and a substantial number of local residents would benefit from these works as they use the lane to access their rear gardens. It is not a specific or exceptional cost to the development. No basis for the calculation of the contribution has been provided. It represents a double-charge as it is provided for in the GDCS.
- **Item 4 Upgrading/providing 16 public lights and associated ducting** – the only lighting requirement discussed with the P.A. related to the area around the proposed pedestrian entrance. There are 6 existing public lights outside the development boundary. The P.A. has not justified the method by which the contribution was calculated or the number of public lights required. There is no drawing indicating the location of the requisite lights. It cannot be considered to be exceptional or specific to the development and constitutes double-charging as public lighting is provided for in the GDCS.

6.2.4. **Precedent** – reference is made to a previous Board decision Ref. 301156-18 where a special contribution condition had been appealed in relation to a residential development at Shronedarragh, Barraduff, outside Killarney. The contribution was reduced by the Board on the basis that it was not exceptional or specific to that development and could have been foreseen when both the Development Plan and the GDCS were drawn up.

6.2.5. **Independent Cost Review** – the sum required by this condition, €224,000.00, when taken with the cost of the works required by Irish Water to upgrade the water/sewerage infrastructure in the area and the levy under the GDCS, would have major implications for the viability of the scheme. It has been calculated that the cost of the works identified in the area shaded blue on Drg. No. 19663-5003 and the

specified upgrades at the vehicular entrance (including 5 public lights), could be undertaken for a sum of €85,170.38, which is in marked contrast to the sum of €204,000 for items 1, 2 and 4 as outlined above.

### **6.3. Applicant Response to third party appeals**

The submission from the applicant (14/02/20) is mainly in the form of a rebuttal of the grounds of appeal. The submission can be summarised as follows:

#### **(1) Planning policy**

- The National Planning Framework sets out ambitious targets for population and employment to deliver sustainable development at an appropriate scale in the right locations. The location of the site in close proximity to the town centre and within the built-up area of the town is one which could support enhanced residential densities. The NPF advocates flexibility in respect of standards on brownfield lands in an effort to achieve well-designed urban infill in existing built-up areas. Thus, building heights, garden sizes and car parking standards may not be appropriate in such locations.
- Kerry CDP contains a number of policies and objectives which support the principle of development at this location. The development of the site at the density proposed is also supported by the policies and objectives set out in the Killarney Town Development Plan (as varied) and in the Sustainable Residential Development in Urban Areas Guidelines (2009).

#### **(2) Adjoining residential amenity - overlooking**

- The nearest part of the proposed development to the appellants' dwellings is 22m and 38m, respectively. There is also an intervening public lane between the boundaries and the rear gardens are enclosed by high walls and vegetative screening/ outbuildings. The rear of Rathmore House (one of the appellant's dwellings) is used as a car park associated with the B&B at this property.
- Two of the windows in question are bathroom windows and are of opaque glass. The developer is prepared to relocate the two bedroom windows to the northern (Unit 12) and southern (Unit 13) elevations, respectively, should the

Board deem this necessary. However, it is considered that this would militate against the objective of these windows to provide passive surveillance of the laneway.

### **(3) Traffic, access and pedestrian safety**

- Traffic impacts will be significantly reduced in terms of HGV trips within the local area. The dairy use involved 10-15 articulated bulk milk trucks and 20-25 ten-tonne refrigerated delivery trucks servicing the dairy on a daily basis.
- The western laneway is a public route and the appellants have no ownership rights over it. The lane has a long-established use as a pedestrian route associated with the dairy and there were truck trailers parked on the lane, directly behind the appellants' properties, on a regular basis, which would have resulted in far more serious pedestrian/vehicular conflict. However, these legacy issues are now addressed by the proposed development.

### **(4) Environmental impacts**

- The former use as a dairy was an intensive industrial use which operated until 2013. The proposed use would result in significant reductions in noise emissions (from refrigerated plant and trucks and an effluent storage operator 24/7), traffic generation (including HGVs) and an ending of industrial/commercial hours of operation (04.00 hours to 22.00 hours daily). This would have consequent traffic and air quality improvements.
- Air quality will not be compromised by the location of windows overlooking the lane due to the light traffic and low speed of travel of vehicles.

### **(5) Car parking**

- The parking provision is in line with the approach advocated in national policy such as the NPF and Sustainable Residential Development in Urban Areas Guidelines for brownfield lands in built-up, central locations. The reduced provision is justified on the basis of the sustainable location of the site in proximity to a wide variety of services and amenities, as well as public transport.
- The laneway is a public route and any unauthorised parking would be subject to parking enforcement.

#### 6.4. **Planning Authority response to third party appeals**

The P.A. responded to the grounds of appeal on the 5<sup>th</sup> February 2020. The observations generally reinforce the comments made in the Area Planner's reports, as summarised above.

- It was reiterated that overlooking would not be an issue as a public laneway separates the properties and that the provision of windows onto the lane would break the monotony of the boundary walls and provide for passive surveillance. It was further considered that the change of use to residential would result in a significant reduction in impact on residential amenities in the area.
- The P.A. considered that the level of pedestrian and vehicular traffic would not justify the need for a separate footpath and that a shared space is more appropriate. The P.A. has required the payment of a levy in this respect.
- In respect of carparking, it was noted that the pattern of development in the area in general is relatively high density with no on-site parking. The NPF recognises the need for flexibility in standards such as parking on brownfield sites. It was reiterated that 29 spaces would be sufficient and sustainable.

#### 6.5. **Planning authority response to first party appeal**

- 6.5.1. The P.A. responded to the first party appeal on **27<sup>th</sup> May 2020**. It was noted that the site is a former commercial industrial site, where the buildings on site will have to be demolished and the material transported off site. It was further noted that the current environment is not conducive to a high-quality urban development and that there is a need for a high standard in the provision of a pedestrian network linking the development to the town centre. Justification for the specific requirements, costings and apportionment of costs has been provided. This will be discussed in the assessment section (7.6.1). It was also confirmed that no other developments in the vicinity have derived benefit from the public infrastructure concerned. It was also stated that the only funding available to the L.A. is through the Road Improvement Grant and the Discretionary Footpath Programme, neither of which is considered relevant to this particular case. It was confirmed that there is no capital funding available for the provision or upgrading of public street lighting.

## 6.6. Third party response to first party appeal

6.6.1. One of the third-party appellants, Pat and Mary Carmody, has responded to the first party appeal on 18<sup>th</sup> February 2020. Reference is made to the first party appellant's comment that

“the specified works will clearly benefit existing and/or potentially other undeveloped lands in the local area.”

In response, it is stated that they are unaware of any other undeveloped lands in the area. Reference is also made to the first party comment that third parties may bring adjacent land forward for development onto the lanes and Rock Road. In response, it is stated that the adjacent lands are small back gardens and that should they ever intend to develop their back garden, the proposed entrance would be from Rock Road and not from the back lane.

6.6.2. Further responses were made by the third parties (26<sup>th</sup> June 2020) to the Planning Authority's submission regarding the first party grounds of appeal (27/05/20). However, no new material issues were raised.

## 7.0 Assessment

I consider that the issues arising from the third party appeals and from the first party appeal can be assessed under the following headings:

- Principle of Development
- Design, scale and layout of development
- Residential amenity
- Adequacy of parking provision
- Traffic, access and pedestrian safety
- Whether works required under Condition 14 are exceptional and specific to the proposed development
- Whether the special contribution amounts to double charging
- Environmental Impact Assessment
- Appropriate Assessment



## 7.1. Principle of Development

- 7.1.1. Killarney is a town with a population of c.13,000 and an excellent level of services and facilities. The County Development Plan envisages a growth in population of approx. 22% between 2015 and 2021. It is the second largest town in Kerry and is designated as a 'Hub' along with Tralee. The Settlement Strategy for Kerry identifies Killarney as a "key destination, economically active supporting surrounding area, located on multi-modal transportation corridor". The site is zoned as 'New Proposed Residential' in the New Killarney Zoning Map A in Variation 4, which relates to centrally located lands within walking distance of the town centre. The proposed development seeks to replace a redundant and vacant industrial premises, which is situated in the midst of a densely developed housing estate, with 25 townhouses. Although the industrial use of the site was long-established, it is considered that the change of use to residential would be consistent with both the residential zoning and the existing pattern of development in the vicinity.
- 7.1.2. National policy, as expressed in the National Planning Framework (2018), Sustainable Residential Development in Urban Areas Guidelines (2009), and the Design Standards for New Apartments (2018), emphasises the need to make the most efficient use of zoned and serviced lands, which are close to towns and villages, with a good range of services and facilities. In such circumstances, there is strong support for increased densities. It is considered that the appeal site is one which could support increased densities in principle, in accordance with national policy. The national guidance generally seeks to achieve higher densities, with a density of 35-50 dw/ha in centrally located sites. However, the Design Standards for New Apartments Guidelines (2018) state that locations that are generally suitable for medium to high density (>45 dwellings/ha) are ones categorised as 'Intermediate Urban Location'. This category is described as being within reasonable walking distance (800-1000m) of principal town/suburban centres or employment locations, including hospitals. Although the proposed development does not contain any apartments, the principle of density based on proximity to town centres is of relevance to the current proposal.
- 7.1.3. It is considered that the appeal site falls within the category of 'Intermediate Urban' due to its proximity (within 200m) to the town centre and a range of facilities

including sources of employment such as the Killarney Community Hospital, St. Columbanus Community Hospital and Killarney Nursing Home. The relatively central location, (within 200m of High Street and 650m of the National Park at Cathedral Walk), and the reasonably high density of residential development in the immediate vicinity, together with the brownfield nature of the site would make this site a good candidate for medium-high density. The proposed development has a density of 60dwelling/ha, which is considered to be appropriate given the nature of the site at this location. It is considered that this density is in accordance with the objectives of the National Planning Framework and the Sustainable Residential Development in Urban Areas Guidelines (2009), and would facilitate the achievement of the objectives of the Development Plan for the area. The proposed development is, therefore, considered to be acceptable in principle.

## **7.2. Design, Scale and Layout of development**

- 7.2.1. The design, scale and siting of the housing development is broadly consistent with the pattern of development in the vicinity of the site. The houses within the Marian Terrace/Brendan's Place/O'Kelly's Villas estate are generally semi-detached or terraced, are two-storeys, and have small gardens and little or no off-street parking. They are generally arranged in rows which back onto the narrow laneways that surround the site. The proposed dwelling units will follow a similar pattern with the rear gardens largely backing onto the lanes. The proposed Block C and both the eastern and western ends of Block A deviate from this pattern, in that they are sited closer to the laneways. Thus, the side elevation of Block C and the eastern elevation of the end unit of Block A directly adjoin the laneway to the east of the site. However, these elevations will be set behind the site boundary walls, which are largely to be retained or replaced.
- 7.2.2. The western end of Block A comprises two units which have been designed to directly address and overlook the laneway. The windows to these houses will face directly onto the lane and the elevations will be set back slightly behind a low wall with railings. Block B also has 'book-end' units which have rear elevations that face the western lane, but are also set back behind a garden wall. It is considered that the layout with the 'book-ends' and elevations with windows facing and/or fronting

directly onto the lanes adds interest to a streetscape, which is currently dominated by high masonry walls, garages, outbuildings and vehicular entrances.

- 7.2.3. At present, the character of the laneways is quite intimidating with no surveillance, and a monotonous continuum of concrete walls, interspersed only by vehicular gateways and garages. If each of the proposed units faced inwards, it is considered that the proposed development would be completely disconnected from its surroundings and would result in a poor-quality environment for both existing and future residents. I would be concerned that the proposed retention/replacement of the existing boundary treatment, to some extent, would perpetuate the enclosed and foreboding character of the laneways, which would be inappropriate for a new residential development. However, I would accept that the nature and narrow width of these lanes would not facilitate a layout whereby all/most of the units faced directly onto them. Thus, the decision to provide for two units to front directly onto the lane, at the point where the new pedestrian entrance is located, and to provide for several other units to overlook the laneways would represent a compromise, which would help to integrate the development into its surroundings. It would also provide for more passive surveillance and greater architectural and visual interest, which would enhance the amenities of the area.
- 7.2.4. The density and scale of development means that the amount of public and private open space is quite limited. However, it is noted that the site is located in close proximity to a wide range of sports facilities and to the commercial services and community facilities available within the town of Killarney. It is further noted that the town is particularly well served in respect of facilities, given its long standing and well-developed tourism role in the County and the considerable number of amenities available to the general public, including the National Park. I would agree that the level and range of amenities provided within the site and in the general vicinity of the site is adequate.
- 7.2.5. The layout of the proposed development is designed to facilitate and encourage pedestrian permeability through the site, which is a welcome change from the enclosed and relatively hostile nature of the industrial site. The layout has been based on a design which accords with DMURS (the Design Manual for Urban Roads and Streets). It is considered that the shared surface internal roadway with the main area of public open space adjacent to the entrance, together with the proposed

pedestrian entrance more-or-less at a diagonally opposite location will provide for an inviting, permeable and attractive development which will be readily absorbed into its surroundings.

### **7.3. Impact on residential amenity**

- 7.3.1. The concerns raised regarding overlooking relate principally to the upper floors of the western end of Block A (Units 12 and 13), and also to the rear windows of Units 9 and 10 (Block B). As mentioned previously, Units 12 and 13 have been designed so that they face directly onto and overlook the lane adjacent to the new pedestrian entrance to the site. The western building elevation has been designed so that there are two bedroom windows at first floor level which face east. The developer has pointed out that these windows overlook the laneway providing passive surveillance and that the other windows at first floor level are bathroom windows with obscure glazing. It has been offered that the bedroom windows could be moved to the northern and southern elevations, respectively, if the Board deemed this to be necessary. However, it is pointed out that this would defeat the purpose of providing fenestration on these elevations in the interests of visual interest and security. It is also pointed out that the elevations in question exceed the recommended 22m window-window distance with the appellants' properties.
- 7.3.2. It is noted that the window-window distances relating to Units 9 and 10 are similarly extensive and that there is a public laneway with a range of structures and/or vegetation which occupies the intervening ground. I would accept that there would be no direct overlooking from these windows, and that any overlooking would be from an oblique angle, which is unlikely to result in any significant loss of privacy or amenity. It is further noted that the design of Block C (Units 23 and 25) and Unit 21 (eastern end of Block A) is such that only bathroom windows, with obscure glazing, would overlook the eastern laneway.
- 7.3.3. Other concerns related to the proximity of the pedestrian entrance to the rear gateways to the properties on Rock Road and to the nature of the landscape and boundary treatment on the western boundary. As stated previously, it is considered that the retention of most of the boundary treatment along this boundary, apart for the section to be removed at the junction with the pedestrian entrance and the facades of Units 12/13, represents an appropriate compromise which would retain

much of the character of the laneways whilst enhancing the appearance, amenity and security of the lanes. The layout does not allow for any further tree planting, but the new trees to be planted along much of this boundary would enhance the visual and residential amenity of the area.

- 7.3.4. The concerns regarding the proximity of the pedestrian entrance are unclear and it is considered that it would not result in any significant loss of amenity to the adjoining properties. The removal of the coniferous trees along the eastern boundary and the provision of a new boundary treatment with more appropriate deciduous tree planting of native species will also enhance the amenities of the area. It is considered that the residential amenity of the site and area would be significantly enhanced by the replacement of the industrial use, which is currently vacant and semi-derelict, with a good quality residential development. The applicant has pointed out, in various submissions, that the previous use involved 24-hour operations including many noisy activities including refrigerated plant and trucks. Thus, the cessation of such activities and the opening up of the site with greater levels of permeability and integration would have a positive impact on the residential amenities of the area.

#### **7.4. Adequacy of parking provision**

- 7.4.1. The proposed development provides for 29 parking spaces and four visitor spaces to serve the development of 25 houses. The developer pointed out that the recently adopted Design Standards for New Apartments (2018) state in relation to Intermediate Urban Locations (4.21), (particularly in the case of developments with >45dw/ha), that planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum parking standard. This approach is also consistent with national planning and transport policy which seeks to reduce the dependence on car borne journeys and to encourage a modal shift to more sustainable forms of transport such as walking, cycling and public transport.
- 7.4.2. It is considered that the provision of one space per dwelling unit, with four visitor spaces is adequate given the proximity of the site to the town centre. It is unlikely that parking would overspill onto the adjoining laneways, as they are too narrow and would be subject to parking enforcement.

7.4.3. The developer has increased the disabled parking provision by one space in the revised drawing submitted to the P.A. on 18<sup>th</sup> September 2019. However, the space is sited within the public open space amenity area, which is further reduced as a result. It is considered that this is not acceptable and one of the visitor spaces should be redesigned instead as a disabled bay. Should the Board be minded to grant planning permission, it is considered that this should be addressed by means of an appropriately worded condition.

## **7.5. Traffic, access and pedestrian safety**

7.5.1. The main concerns raised relate to the unsuitability of the laneways for additional traffic, both vehicular and pedestrian traffic, due to the narrow width of the lanes, the nature of their use, (i.e. servicing rear gardens), and the fact that they are often blocked by delivery trucks. It is noted that the vehicular access to the proposed development is confined to the existing point of access which is to be improved as part of the proposal. This access, which is through a housing estate, was formerly used by large HGVs which would have accessed the Dawn Dairies site on a 24-hour basis. It is considered that the proposed development will not have an adverse traffic impact on the local road network and is likely to result in significant improvements both in terms of reduction in traffic and in enhancements to the entrance, as set out in Drawing no. 19663-5003 (Rev. A) submitted to the P.A. on 28/11/19.

7.5.2. The laneways are narrow, not generally overlooked and the existing environment is a relatively hostile, or at least uninviting, one. The proposed development will improve the situation by providing an increased level of surveillance, making the boundary treatments more attractive and providing landscaping to soften the appearance of the boundary walls. In addition, the opening up of the site to pedestrian traffic through the centre will break through a currently impermeable block in the middle of the network of laneways. Furthermore, the proposed development includes proposals to enhance the ground surface and public lighting.

7.5.3. It is noted that the Road Safety Audit (May 2019) had identified several problems relating to the issue of potential conflict between vehicles and pedestrians using the laneways. Other issues identified included the current tendency for vehicles to park on and obstruct laneways and the need for appropriate tie-ins for pedestrians accessing the site to avoid conflict with those using the northern laneway when

travelling to and from Marian Terrace. It was considered that these matters would give rise to an increased risk of conflict between pedestrians and vehicles.

- 7.5.4. The recommendations of the RSA to address these problems included making the pedestrian entrance more conspicuous with no ambiguity between soft and hard landscaping and ensuring that there were no sharp differences in levels which would result in a trip hazard, as well as ensuring that adequate public lighting was provided. Most of the issues were addressed in the FI submitted on 18<sup>th</sup> September 2019, and the remainder was addressed in the submission made on 28<sup>th</sup> November 2019. Drawing no. 19663-5003 includes resurfacing of the public road linking Marian Terrace with the site entrance and of the public lane to the south of the new pedestrian entrance, and includes new footpaths and dropped kerbs etc.
- 7.5.5. It is considered, therefore, that the proposed development is likely to make the use of the laneways by pedestrians more enticing and attractive. As the vehicular entrance does not interfere directly with the laneways, there would be no additional conflict between vehicles and pedestrians, provided that the recommendations of the Road Safety Audit are carried out and as shown in Drawing 19663-5003 (Rev. A).

#### **7.6. First party appeal against Condition 14 - Exceptional and specific nature of works outlined in special contribution levy**

- 7.6.1. The first party appeal is against Condition 14 which requires the payment of a Special Contribution towards certain road improvement works and public lighting. Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution and further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12). It is clear from the legislation and the guidance that such a requirement should only be made in respect of a particular development whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme. It is further clear that such a condition must be amenable to implementation under the terms of S 48(12) of the Act. This means that the basis for the calculation should be clear from the planning decision. The Guidelines state that “this means that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.”

7.6.2. The appellants have objected to the requirement to pay a 100% contribution to the cost of resurfacing the vehicular entrance and public footpath to the development (€46,000); 100% contribution to cost of resurfacing the lane to the east of the development (€20,000); 100% contribution to the cost of upgrading the lane to the west of the development (€100,000) and 100% contribution to the cost of providing/upgrading 16 public lights and associated ducting (€58,000). It is submitted that these works are neither exceptional nor specific to the development. Furthermore, given that the site is zoned 'New Residential' and that the GDCS provides for the carrying out of similar type of work, it is not accepted that these works could not have been foreseen by the P.A. at the time that the GDCS was drawn up.

The works in question fall into four separate elements.

**Item 1. Road linking Marian Terrace to the entrance to the development**

7.6.3. Table No. 1 of the P.A. Response (27/05/20) indicates that this item comprises two elements, namely the overlay of the road leading to the entrance and the construction of the footpath. The road overlay is justified on the basis of the amount of traffic that is anticipated as part of the construction phase, having regard to the Waste Management Plan, and to the risk that the roadway outside of this section may fail due to the haulage of material. The cost for this element is **€26,000**, which is based on a calculation of - 40m x 13m @ €50/m<sup>2</sup>. The second element is justified on the basis of the need for a public footpath to serve the development. The cost for this is **€20,000** and is based on footpath 40m @ €300/m - €12,000 and drainage €8,000.

7.6.4. The RSA (dated May 2019) had identified a range of issues that were likely to give rise to traffic hazard in respect of conflict between vehicles and pedestrians near the entrance to the site. Following discussions with the planning authority planners and engineers, Drawing No. 19633-5003 Rev A was submitted in November 2019. The Planning Authority was satisfied that this revised drawing had addressed these issues. It indicates that the public road and car parking area (shaded pink) linking Marian Terrace and the site entrance is to be re-surfaced. This is a very wide section of road which was presumably required for the large trucks entering and leaving the industrial site. There are no footpaths or any other form of pedestrian priority and at the time of my inspection, there were cars parked randomly along the northern



section. The southern section is laid out as perpendicular parking bays. The appellant has advised that these spaces are not available to the general public and are set aside for the occupants of houses in Marian Terrace. The second element of the proposed works include the provision of a new concrete footpath along the northern section, which would become a shared surface (with flush kerb) closer to the entrance, and a Stop sign at the junction with the northern laneway.

7.6.5. The first party appellants have responded (30<sup>th</sup> June 2020) to the P.A. response by stating that the daily truck movements associated with the Dawn Dairies operation were substantial and that the loadings from the waste management haulage during construction/demolition would be comparable. The first party appellants also argue that this area is a public road and that the benefits accruing from these works would resolve existing pedestrian/vehicular conflicts at this location and will directly benefit the existing residents of Marian Terrace and O’Kelly’s Villas, but the resurfacing of the parking bays will not benefit the future residents of the scheme. Although it is necessary that the works required as part of this Special Contribution condition be clearly identifiable as exceptional and specific to the proposed development, I do not accept that this means that the works can only serve the particular development proposed without providing benefits to the wider community.

7.6.6. I would agree that the area leading to the entrance is unusually wide and unstructured and, that without appropriate interventions, could lead to a hazardous environment for pedestrians. The introduction of 25 new dwelling units at this location, with a parking provision which is substantially lower than the standard provision, will undoubtedly lead to an increased level of pedestrian activity along the lanes linking the site with the town centre and the amenities in the general vicinity. Thus, the provision of improved pedestrian facilities at the entrance is considered to be justified and necessary and is specific to the proposed development. This is clear from the planning and other technical reports, and from correspondence between the P.A. and the applicant, including the applicant’s own Road Safety Audit.

7.6.7. It is considered, therefore, that the proposed works consisting of the improved pedestrian facilities (raised footpath and shared path or tie-in), road signage and resurfacing of the roadway leading to the vehicular/pedestrian entrance of the site are related to the development and necessary for the provision of safe access to the proposed development. However, the resurfacing of the parking bays outside of the

site do not appear to have any connection with the proposed development. I would accept therefore that the works outlined in Item 1, apart from the resurfacing of the private parking bays outside the site, are specific or exceptional costs. As such, 100% contribution would be inappropriate, and should exclude the resurfacing of the parking area. The cost is calculated on the basis of 40m x 13m but this should be reduced to 40m x 7m.

- 7.6.8. Given that these works are outside of the site boundary, I note that the applicant had requested that their provision be addressed by means of a condition under s34(4)(a) of the P&D Act, requiring the applicant to carry out the works in agreement with the P.A. A further revision of the drawing, 19633-5003 Rev C, was submitted to the Board on 30/06/20. The first party has also provided a revised set of costings for the works involved and has repeated its offer (30/06/20) to carry out the road works itself in accordance with the revised drawing. However, the planning authority has addressed this matter by way of a requirement to pay a special contribution under S48(2)(c) instead. This approach is considered to be reasonable, provided that the works relate solely to those that are exceptional and specific to the development. It is considered, therefore, that should the Board be minded to grant permission for the development, that a condition should be attached requiring the payment of a special contribution in respect of these works. However, that cost should be adjusted to reflect the exclusion of the parking area. This would reduce the cost of Item 1 to **€34,000** instead of €46,000.

### **Item 2. Resurfacing the laneway alongside the eastern boundary**

- 7.6.9. This laneway is very narrow and dark at present and at the time of my inspection was blocked by a parked vehicle. The proposed development includes a new boundary treatment along the eastern boundary which will involve the felling of the coniferous trees, their replacement with trees of a more appropriate species, as well as the replacement of the blockwork wall. The ground levels fall away from the east to the west and from the south to the north, (Drawing 31006 refers).
- 7.6.10. It is proposed to provide a retaining wall which will rise from 465mm to 1800mm and a new blockwork wall (1500mm) will be erected on top of the retaining wall, for the majority of the length of the boundary. It is considered that these works, together with the demolition of the existing wall and the uprooting of the tall mature conifers

that line the boundary, are likely to result in significant disturbance to the existing laneway, which is very narrow. The new boundary wall and tree felling is necessary to facilitate the development and will benefit the future residents. The P.A. in its response (27/05/20) has also pointed out that the construction of the new boundary treatment/retaining wall will alter the surface water drainage here and this will need to be upgraded. The cost of the upgrading of the lane is given as €12,750, based on 85m x 3m @ €50/m<sup>2</sup>, and the cost of upgrading the surface water drainage as €7,500 (96m of roadside drainage @75/m).

- 7.6.11. It is considered that in these circumstances, the requirement to contribute to the full cost of resurfacing of the laneway is reasonable and is connected with the development, notwithstanding the fact that there are no proposed entrances directly off this laneway. This item should therefore be retained at **€20,000**.

### **Item 3. Upgrading of laneway to the west of the site**

- 7.6.12. The requirement is to contribute 100% of the cost of “upgrading” of this laneway as a “Shared Space for Pedestrians and Vehicles”. I would agree with the applicant that this was ambiguous and unclear from the planning decision as it was not clear what length of laneway was involved. In the response from the P.A. (27/05/20) it is now clear that it relates to 100m length rather than entire laneway. However, the ambiguity remains as the length of the blue shaded area (from pedestrian entrance to the junction with Bishop Moynihan Crescent) is estimated to be c.73m, and the length of the laneway from the junction with the northern lane to the junction with the southern lane is c.75m. The laneway north of the proposed pedestrian entrance will not be altered or affected by the proposed development, as the boundary walls are to be retained and there is no proposed vehicular access to the site from this lane. The southern part will, however, be altered with a new pedestrian entrance and the demolition and replacement of a section of the existing wall with a new boundary treatment. It is noted that the applicant has offered to resurface the area shaded blue in Drawing No. 19663-5003 Rev A, (and Rev C), as it is proposed to carry out upgrading works to the Irish Water infrastructure along the section of the lane to the south of the proposed pedestrian entrance.
- 7.6.13. It is considered that the requirement to contribute 100% of the cost of the upgrading and resurfacing of 100m length of the western laneway as a shared vehicular and

pedestrian pathway is unjustified. The applicant is required to pay for the upgrading of the IW infrastructure along the lane, which it is stated would amount to €150,000. The restoration of the lane following the upgrading works to the underground sewers and watermains will necessitate resurfacing of the lane and it would benefit both the future residents of the development and existing residents if this resurfacing ensures that a safe pedestrian environment is provided. The connection between the new pedestrian entrance and the town centre will be the shortest route to the town centre and will be of vital importance. Thus, it is important to ensure that the pedestrian environment along the stretch shaded blue is safe and attractive.

- 7.6.14. It is also recognised that there are several existing properties along the laneway that have vehicular access. Thus, the surface must be capable of accommodating both pedestrians and vehicles as a shared pathway. However, this does not mean that the developer should have to pay for 100% of the associated costs along the entire length of the laneway, as many other landowners will benefit from the resurfacing works. It is considered that the relevant length is c.73m and that the applicant should pay 50% of the cost. As the cost for 100m is given as €100,000, the cost for 73m is assumed to be €73,000, 50% of which would be **€36,500**. It is considered that this would be an appropriate amount of contribution for the required works, particularly as the developer must pay for the upgrading of the IW infrastructure also. It is therefore considered that should the Board be minded to grant permission, the condition should be amended accordingly.

#### **Item 4. Upgrading and provision of 16 public lights and associated ducting**

- 7.6.15. The P.A. in its response to the grounds of appeal (27/05/20) states that the current lighting system is not suited to the standards required to encourage vulnerable road users to use the laneways which access this development, hence the requirement to upgrade the lights and the associated ducting. However, no plan showing the layout of the 16 public lights has been provided. I noted from my site inspection, that there were public lights along the northern, western and southern laneways and between the entrance and Marian Terrace, but none along the eastern laneway.
- 7.6.16. The developer has pointed out that there are eight public street lights outside the boundaries of the property, four of which are new LED lights. It is stated that the only requirements for additional lighting discussed with the P.A. (prior to the decision)

related to the new pedestrian entrance and the internal roads within the development. Drawing no. 19663-5003Rev C (submitted to Board on 30/06/20) includes a survey of existing lighting and four proposed lights. It is noted, however, that no lights are proposed for the eastern laneway.

- 7.6.17. The requirement for a 100% contribution towards the cost of 16 public streetlights has not, therefore, been demonstrated by the P.A. as being necessary or justified, and seems to duplicate the requirements contained in Condition 38 of the P.A. decision. I would agree that requirements for additional public lighting should be confined to within the site, the relocation of the existing public light at the junction with the proposed new pedestrian entrance and the upgraded public areas. However, Condition 38 of the P.A. decision requires the provision of the lights within the development (including the junction) by the Developer, which is considered to be reasonable. The Developer appears to be prepared to provide public lighting along the blue shaded area, which includes one existing street light (No. 5), which will probably need to be replaced, and is likely to require an additional two lights. The eastern laneway is likely to require a minimum of three lights.
- 7.6.18. It is considered therefore, that in the absence of a lighting plan which shows the location of these 16 public lights, it is considered reasonable that the developer should provide a contribution towards the provision of street lighting outside the site boundary on the eastern laneway and the blue shaded section, where street lights do not currently exist. The density, scale and design of the proposed development is deemed acceptable on the basis of the provision of good, secure connectivity with the town centre and public lighting along the existing laneways is considered necessary to facilitate secure connectivity. However, the developer should be required to pay for 6 lights (outside of the site boundaries) as opposed to 16 lights.
- 7.6.19. The contribution is based on 16 lights @ €3,000/light and 270m of ducting @ €40/m, which amounted to €58,000. The combined unit cost for the 16 lights, (including associated ducting), would therefore be €3,625 and the cost for 6 no. public lights would be **€21,750**.

## **7.7. Special contribution condition - double charging**

- 7.7.1. The General Development Contribution Scheme (25/7/17) makes provision for future infrastructure projects under the headings of Roads and Transport and Community Infrastructure. It is stated that these infrastructure projects are identified in objectives in various local plans and in the County Development Plan. The projects are listed in Appendix A of the GDCS. The list of the projects to be funded by the GDCS is quite generic and includes the provision/upgrading of roads, bus corridors, infrastructure to facilitate public transport, cycling/pedestrian facilities and traffic calming etc. The list of roads and transport infrastructure projects are strategic in nature such as the Tralee Northern Relief Road, the Killarney Inner Link Roads etc. It includes “Development of Laneways”, which was referred to by the appellant. However, the Killarney Town Development Plan refers to these laneways (12.27) as the hub of bringing people and business together. The objective is to revitalise the laneways in the town as part of the retail core.
- 7.7.2. It should be noted that, notwithstanding the assertion of double-charging, the appellant has not appealed Condition 15 which requires the payment of a financial contribution of €63,897.60 under the GDCS. As stated previously, it is considered that the requirement to contribute to the resurfacing of certain sections of the lane and the facilitation of safe pedestrian movement is justified, where it is specifically related to the proposed development, but I would question the inclusion of the car park near the entrance and the northern part of the western lane. As such the special contribution levy should be adjusted accordingly. I do not accept that the requirement to pay for 16 public lights is justified as the applicant will provide public lights within the site and at the pedestrian entrance, and this item should be adjusted to the provision of 6 public lights where there are currently none and/or existing lights need to be replaced due to works relating to the development. Subject to these amendments, it is considered that the requirement to pay a special contribution does not amount to double-charging in this instance.

## **7.8. Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development within the development boundary of Killarney town on serviced lands, there is no real likelihood

of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 7.9. **Appropriate Assessment**

- 7.9.1. The site is located within 600m of two European sites, Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038). There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on brownfield and serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## 8.0 **Recommendation**

Having regard to the foregoing I recommend that permission for the above described development be **granted** for the following reasons and considerations subject to conditions.

## 9.0 **Reasons and Considerations**

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

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 18<sup>th</sup> day of September 2019 and 28<sup>th</sup> day of November 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The proposed development shall be amended as follows:-
  - (a) The bathroom and landing windows on the first floors of the dwelling units shall be fitted with obscure glazing.
  - (b) The disabled parking bay shall be removed from the area of public open space and shall be provided in lieu of one of the visitor parking bays instead, with any necessary adjustments to the adjoining planting strip to accommodate the larger bay. The area to the north of Bay 24 shall be absorbed into the public open space.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

9. Parking for the development shall be provided in accordance with the Site Layout Plan Drawing No. 31001 P01.01 submitted to An Bord Pleanála on

18<sup>th</sup> day of September 2019, except for the amendment required by condition 2(b) above. A minimum of one parking space shall be provided for each residential unit hereby permitted and shall also provide for a minimum of three visitor spaces and one parking space which shall be reserved for persons with physical disabilities.

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

10. Public lighting shall be provided in accordance with a scheme which shall include the relocation of the existing public light at the pedestrian entrance to the site, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

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

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

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

12.
  - (a) All screen walls and boundary walls within the proposed development shall be constructed and finished in accordance with the details submitted to the planning authority on 18<sup>th</sup> day of September 2019.
  - (b) Details of the location, design and construction method of any retaining walls, including those between plots, shall be submitted to the planning authority for written agreement prior to commencement of development.

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

13. The landscaping scheme shown on Drawing No. 31004 entitled Proposed Landscape Plan, as submitted to the Planning Authority on the 29<sup>th</sup> day of

January 2019, and as amended by the Drawing Nos. 31001 and 31006 to An Bord Pleanála on the 18<sup>th</sup> day of September 2019 and by Drawing No. 19663-5003 Rev A on the 28<sup>th</sup> day of November 2019, shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

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

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

15. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 29<sup>th</sup> day of January 2019. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

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

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

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

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

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

18. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional

circumstances where prior written approval has been received from the planning authority.

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

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

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

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

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

21. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, dust suppression, pest control, bunding of oil containment facilities and measures for the prevention of silt/sediment from entering any watercourse of drainage system.

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

22. 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.

23. 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.

24. The developer shall pay €112,250.00 (one hundred and twelve thousand, two hundred and fifty euro only) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the Central Statistics Office) to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of
- (a) Resurfacing of the road and provision of a footpath linking the site entrance with Marian Terrace (€34,000);
  - (b) Resurfacing of the eastern laneway following the felling of trees and the completion of the new boundary treatment along the eastern boundary of the site (€20,000);
  - (c) Resurfacing and upgrading of the western laneway to the south of the new pedestrian entrance to the development following completion of the upgrade to the Irish Water infrastructure, as shown shaded blue on Drawing No. 19663-5003 Rev. A, submitted to the planning authority on the 28<sup>th</sup> day of November 2019 (€36,500);
  - (d) Provision of six public lights to be located on the eastern laneway and on the blue-shaded section of Drawing No. 19663-5003 Rev. A, submitted to the planning authority on the 28<sup>th</sup> day of November 2019 (€21,750).

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The

contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with the changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

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

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**Mary Kennelly**  
**Senior Planning Inspector**

**24<sup>th</sup> July, 2020**