



An  
Bord  
Pleanála

## Inspector's Report ABP 306665-20

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<b>Development</b>	Construct 2 no. dwelling houses one and a half storeys in height served by an associated access way and common parking area and all associated site works
<b>Location</b>	Woodlawn Road, Ballycasheen, Killarney, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	19/1175
<b>Applicant</b>	Michael Casey
<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
<b>Appellants</b>	Simon Mangan
<b>Observers</b>	Derry & Joan O'Mahoney
<b>Date of Site Inspection</b>	8 <sup>th</sup> May 2020
<b>Inspector</b>	Mary Kennelly

## 1.0 Site Location and Description

- 1.1.1. The site is located on Woodlawn Road, approx. 600m to the east of the junction with the N71 (Muckcross Road), which in turn is approx. 300m south of the junction with Countess Road. The N71 forms part of the Ring of Kerry and Woodlawn Road links this road with the N22, Cork-Killarney road, forming an unofficial bypass to the south of the town. Woodlawn Road is largely residential in character with several large houses on long narrow plots and also provides access to a number of housing estates. It is within the development boundary of the town of Killarney and is located approx. 1 km from the town centre.
- 1.1.2. The lands to the west of the site are in agricultural use with a farmstead and a lodge within the grounds. There is robust mature landscape screen planting along the boundary of the site with this property. The lands to the east contain two individual dwelling houses which are separated by c.133m. The northernmost house is in use as a B&B, Mystical Rose Guest House and includes several large outbuildings and a guest accommodation building to the rear. At the time of my site inspection, this property was vacant and had been undergoing significant refurbishment and alterations which had been suspended during the Covid-19 pandemic. There is a paddock to the south of this property and the site of the second dwelling house, Bramblewood House, further to the south again.
- 1.1.3. The site is a long narrow plot which is a backland site to the south of and directly accessed from Woodlawn Road. There is a dormer bungalow immediately to the north of the site and to the west of the site entrance, (which had previously formed part of the site but is now excluded from the site). The site is c.200m long and varies between 16m and 18m in width, with a stated area of 0.28 hectares. The site was previously the subject of a planning permission for the construction of 3 detached houses and had been cleared in advance of that permission. The original dormer bungalow has since been renovated and is occupied.

## 2.0 Proposed Development

- 2.1.1. It is proposed to construct two one-and-a-half storey dwelling units on the site. The site would be accessed by means of the existing driveway to the east of the dormer bungalow which would lead to a communal car park at the northern end of the site.

Access to the proposed dwelling units would be gained from a new access road (3.7m wide) which would travel alongside the western boundary of the site from the parking area to a proposed emergency turning area at the rear of the site. The access drive will be of TERRAM BODPAVE 85 (with gravel infill) and will incorporate a tree root protection mat.

- 2.1.2. The northernmost dwelling house would be set back from the rear boundary of the dormer dwelling by c.30m and the second dwelling house would be set back a further c.50m. It is proposed to provide front and rear private garden areas and three areas of public open space. The first area of POS (86m<sup>2</sup>) is located to the north of Unit 1, the second area is located between the two proposed dwellings (265m<sup>2</sup>) and the third area is located to the south of Unit 2 (70m<sup>2</sup>). A footpath is proposed alongside the driveway from the car park. A comprehensive landscaping plan is proposed which includes the retention of the existing boundary treatments and mature planting along the boundaries and the planting of beech hedging and specimen trees as screen planting.
- 2.1.3. The design of the dwellings is contemporary. The floor areas are given as 198m<sup>2</sup> (Unit 1) and 223m<sup>2</sup> (Unit 2). Each dwelling is 4-bedroomed with individual site areas of 484m<sup>2</sup> and 505m<sup>2</sup>, respectively. The proposed areas of private amenity space are 164m<sup>2</sup> and 176m<sup>2</sup>, respectively. The dwellings are sited so that they are set back from the eastern boundaries with high level or obscure glazing windows on these elevations. The north and south facing windows of Unit 2 are at an oblique angle to avoid overlooking to the north and south.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission subject to 19 conditions including:

**Condition 2:** Development contribution of €11,472.00.

**Condition 4:** Connection shall be made to public water and foul sewerage to the satisfaction of Irish Water and no development to commence until connection agreement signed.

**Condition 6:** No overnight commercial guest accommodation.

**Condition 8:** Requirements to landscape site in accordance with submitted details and to protect and retain all boundary screening.

**Condition 10:** Bond to secure satisfactory completion of roads, footpaths, drains, public open space etc. until taken in charge.

**Condition 18:** Public lighting.

**Condition 19:** The development shall be managed by a properly constituted management company.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's report noted that the site is zoned Existing Residential, is fully serviced and that a live permission for the construction of 3 dwelling houses, in addition to the retention/renovation of the dormer dwelling house, exists on the site and has been extended until May 2020. It was noted that the current proposal for 2 houses represents a simpler design. The following points were made in the Planner's Report

- **Overlooking** – although the layout is very similar to that of the 3 permitted dwelling houses on the site, the proposed dwellings have been designed to avoid overlooking onto development on adjacent sites to the east.
- **Reasons for refusal 17/342** – these have been addressed as the dwelling that had previously been proposed to the southwest of Bramblewood House has been omitted, which provides a greater separation distance from this dwelling.
- **Impact on lands to west** - The retention of the mature landscaping on the boundary with the lands to the west (appellant) is to be retained and there is no adverse impact on the future development of these lands. The farm is zoned for residential development, but given the extent of the plot, it will be possible to develop these lands in such a way as to design out any potential impact.
- **Density** – density on this infill site close to the town centre is acceptable and in compliance with national and local policy.

- **Road layout** – the unconventional shared road layout was accepted by the Board in the previous permission.
- **Design and layout of dwellings** – the layout and design are acceptable. The amount of open space is above the standards required by the Development Plan. It will be overlooked by both units. Overall, the layout makes the best use of the site.

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

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

- 3.3.1. **Estates Engineer's Report** (26/11/19) – it was noted that the gated development meant that it would not be taken in charge. It was considered that parking should be within the curtilage of each unit and that the gravel access road should be reconsidered. Additional details were required in relation to matters such as footpath surfaces, turning bays, access road finish and cross section, location of services, visitor parking and a bond to be conditioned if permission is granted. It was recommended that a minimum road width of 5.5m be required. Concern was also expressed regarding the lateral clearance to the estate road which should be a minimum of 1.0m and that the entrance gate piers are encroaching on the estate road width. The gate should be widened and recessed. It was queried whether it was proposed to apply for a third house on the site as the land registry folio extends south of the proposed hammerhead.

### 3.4. **Prescribed Bodies**

- 3.4.1. **Irish Water** (19/11/19) stated that further information would be required in respect of the means by which it is proposed to connect to both public water mains and sewer. It was pointed out that the proposed connections would be subject to the IW Capital Investment Programme. It was stated that the developer would need to enter into a connection agreement with IW and that both developments shall have separate water and wastewater connections.

### 3.5. Third Party Observations

Objections received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3<sup>rd</sup> Party appeal received and summarised in section 6 below. The concerns raised related to the following issues

- Piecemeal development and Board refused permission previously.
- Extensive tree lined boundary will be damaged during construction.
- Inadequate boundary treatment with working farm to west.
- Overlooking by excessive amount of fenestration on western elevations and lack of 11m depth from boundary.
- Unsatisfactory outlook, privacy and daylight for future occupiers.
- Prejudice of future development potential of lands to west and to east.
- Clarification re height of eastern retaining wall.
- Visually obtrusive from lands to east.
- Vehicular access should not be gated.

### 4.0 Planning History

- 4.1.1. **PL08.300033 (Reg no.17/342)** – planning permission refused for demolition of existing dwelling and construction of 4 no. dwellings and access road. Reasons were based on firstly, impact on visual and residential amenity of Bramblewood House due to siting of Units 3 and 4 (immediately to NW and SW of same) including visual obtrusion, overlooking and overshadowing. Secondly, the proposal was considered to constitute overdevelopment of the site, having regard to adverse impacts on the lands to the west and the existing mature trees along this boundary and that the proposal would militate against the future development of zoned and serviced lands to the west. the proposal to demolish the existing house would have created an unacceptable gap in the streetscape which would be injurious to the visual amenities of the area.

- 4.1.2. **PL63.235868 (09/5063)** – planning permission granted for permission to construct 3 no. dwellings to the rear of the existing house and a new entrance to Woodlawn Road. The permission is for a similar layout, but the design of the dwellings was far more unconventional than that currently proposed. This permission was extended to May 2020.
- 4.1.3. **PL63.230711 (P.A. 08/4932)** – permission refused by Board to demolish the existing house and to construct 5 dwelling houses on the site. The reason was based on the size and configuration of the restricted site which would result in an unsatisfactory outlook, privacy and daylight for the future occupiers, and that it would comprise disorderly piecemeal development and would jeopardise the survival of the trees on the western boundary.
- 4.1.4. **PL63.224784 (P.A. 07/4737)** – permission refused by Board for demolition of existing house and construction of 6 houses on the site. The reason for refusal was similar to that outlined for 230711 above.
- 4.1.5. **PL63.215680 (P.A. 05/4349)** – permission refused by the Board for the demolition of the existing house and the construction of four houses for a similar reason to that outlined in respect of 230711 above.

## 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 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)

In order for small towns and villages to thrive and succeed, it is stated that their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. New development should contribute to compact towns and villages and offer alternatives to urban generated housing in unserviced rural areas. The scale should be in proportion to the pattern and grain of existing development. In terms of densities, centrally located development in small towns and villages could achieve densities of up to 30-40 dw/ha., whereas edge of centre sites should achieve 20-35 dw/ha.

### 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.

#### 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 D (Variation 4) as being located in an area zoned as '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.

## 5.5. **Natural Heritage Designations**

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

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A Third-Party Appeal has been received from Simon Mangan, the owner of the lands to the immediate west of the site. The submission can be summarised as follows:

- **Extensive planning history** – The site has been the subject of extensive history of what seems to have been speculative development. Most of these proposals have been refused including proposals for 6 houses, 5 houses and 4 houses. The permission that was granted was for 3 houses which has been extended until May 2020. The current proposal is not similar to that as it is for two houses. The previous reasons for refusal have not been adequately addressed, which included disorderly piecemeal development, visually obtrusive development due to height, scale and design of the units on a restricted site, overdevelopment of the site, injury to residential amenity of adjoining properties and hindering of future development of adjoining lands.
- **Piecemeal development** – the site is a narrow infill strip with a significant area of land to the west. The proposal amounts to piecemeal development which is inappropriate given the narrow width of the site and that permission has been refused several times in the past by the Board on this ground. Whilst there are similar but older development to the east of the site (in rear gardens), the proposal will severely restrict the optimum use of the adjoining lands to the east and west.
- **Density of proposed development** – It is submitted that the density is at 7 units/hectare, but the recommended density in the Killarney town Plan is 30

units/ha. The reality is that the density achievable on the site is restricted due to the geographical constraints and the site should only be developed as part of a larger area of land to the west or an amalgam of narrow gardens to the east. It represents unsustainable and inefficient use of the lands and it would militate against the future development of adjoining zoned and serviced lands.

- **Impact on residential amenity** – the proposed houses would overlook and overshadow the appellant’s property it would also be visually obtrusive and will depreciate the value of his property. Overlooking from the western elevations would have a significantly negative impact on the adjoining lands. The proximity of the dwellings to the eastern boundary will have a profound impact on the amenities of the lands to the east.
- **Taking in charge** – the proposed development would not be taken in charge and would be a gated development. This is contrary to the objectives of the Killarney Town Development Plan which promotes connectivity and permeability and discourages gated developments (12.37.3). It would encourage further such development elsewhere, which would set an undesirable precedent.
- **Planning Officer’s report** – the content of the observation made by the appellant was not given proper consideration by the P.A. In particular, no reference is made to the low density which compromises the potential development of the adjoining lands and the future layout of any such development to the west. It is accepted that there is a live permission on the site for 3 houses, but this has not been implemented. This factor has been given too much weight by the P.A.

## 6.2. Applicant Response to grounds of appeal

The submission from the applicant (18/03/20) is mainly in the form of a rebuttal of the grounds of appeal. The submission can be summarised as follows:

- (1) **Previous planning permission** – the design of the 3 no. units previously granted is impractical and the construction costs renders the development unviable. The permitted designs have been extensively tested in the market

and it was concluded that there is no market for these designs but a strong market for contemporary more conventional homes such as that now proposed.

**(2) Planning policy** – site is zoned Existing Residential and is within the serviced and built-up part of Killarney town. The Plan encourages infill development and the site area is well in excess of that required for a single dwelling house. The proposed development complies with residential zoning objective and with all of the Development Management standards including public open space and private open space provision. The southern portion of lands adjoining the western boundary are now zoned agricultural (and not residential as was the case when the previous proposal - 300033 - was under consideration).

**(3) Planning history and comparison with proposed development** – each of the previous cases have been dealt with on its merits, including the permission granted by the Board (235868) and none of the previous decisions indicated that development of the site was inappropriate in principle.

The current proposal omits the dwelling previously proposed to the south west of Bramblewood House (300033) and also provides for a greater separation distance between that house and Unit 2. The objection to the demolition of the original dwelling and the creation of a gap in the streetscape has also been addressed. The units have been re-designed to overcome issues of overlooking and to address the future development potential of adjoining lands. The existing mature trees on the western boundary are retained.

**(4) Density and layout of development**

- The Killarney TDP does not specify that a density of 30 units/ha must be achieved. The Plan notes the total number of hectares zoned for residential development and provides a number for the total potential number of dwelling units that could be provided. The proposed development is at an appropriate density for an infill site and has the capacity to accommodate 2 dwelling units without compromising the residential amenity of adjoining properties. It also presents a more sustainable use of the land than currently exists, aims to increase the density of the site and is in accordance with national and local policy objectives.

- The reference in the KTDP to gated developments is considered to relate to larger scale developments. The subject site is fairly unique in terms of its physical constraints and as such, would not give rise to a precedent.

**(5) Residential amenity**

- The depths of the rear gardens are in excess of 11m (required by KTDP 12.12.1). The open space area exceeds the minimum standard of 15% as a total of 521m<sup>2</sup> is provided which represents 18.5% of the site area.
- The re-design of the dwelling units ensures that there would be no overlooking of the adjoining properties to the west and east. This is achieved by means of the design, location and orientation of windows such as by providing angled windows and opaque glazing to non-habitable rooms. It should be noted that the previously permitted development has large expansive glazed areas with substantial balconies, which do not feature in the current proposal.

**(6) Future development potential of adjoining lands**

- The development is not piecemeal as the Board's decision on 230711 had addressed this issue, taking account of the Inspector's advice that it was similar to development behind the houses along Woodlawn Road to the east and that the site is not required to facilitate development of lands to the west. As the southern portion of the appellant's lands are now zoned agricultural and not residential, the proposed development involves just one dwelling unit being placed next to the residentially zoned lands to the west.
- The design of the proposed dwellings is such that they would not unduly constrain development on adjoining lands as windows on the western elevation are generally high level or to non-habitable rooms. The retention of mature trees, which the Board has previously specified, together with the design and layout of the development, would mean that there would be no overlooking. The development potential of the lands to the east has already been exhausted by existing and permitted development and the lands to the south are zoned for amenity purposes.

### 6.3. Planning Authority Response

The P.A. responded to the grounds of appeal on the 4<sup>th</sup> March 2020. The following points were made:

1. **Density** – the development of two houses on this restricted site would be in accordance with the prevailing density in the established area.
2. **Impact on development potential of adjoining lands** – the development of this site will not affect the development of adjoining lands to the west which consist of extensive farmland that have been zoned, but have remained undeveloped, for decades. The size of the appeal site relative to the appellants' lands means that it would have little or no impact on the development potential. The design of the proposal would not give rise to any adverse impacts that would affect the amenity or development potential of these lands.

### 6.4. Observations on the grounds of appeal

6.4.1. An observation on the appeal was submitted by Mr and Mrs O'Mahoney of Bramblewood House on 28<sup>th</sup> February 2020. The main points may be summarised as follows:

1. **Loss of privacy** - the patio area to the rear of Unit 2 will be directly on their boundary and impact on their privacy. Windows on the second level overlook the observer's lawn. There is a large south-facing window at second level looking directly into their bedrooms (which face north).
2. **Site orientation** – due to the restricted nature of the site, with a narrow width, the proposed development would result in over development and the construction of Unit 2 on their boundary. It is queried whether the width of the site can accommodate the development as proposed.
3. **Planning history of site** – The Board refused the last application – 300033 – when it was stated that the siting of houses close to existing houses to the south west and to the north west of the adjoining dwelling house known as Bramblewood House, the proposal would constitute a visually obtrusive form of development when viewed from lands to the east and that it would overlook and overshadow these adjoining properties. It is submitted that Unit 2 presents exactly the same issues as Unit 3 of the development that was refused.

4. **Loss of light** – Unit 2 will result in loss of sunlight to their front garden. The height of this unit at 7m is over development.
5. **Impact on trees on boundary** – the boundary on the eastern side is of ‘man-made stone’ and incorporates mature trees of a native species. This extensive tree lined boundary of native deciduous trees, including silver birch, oak and holly (the latter protected species) will be damaged during construction. The health of the trees is disputed as they are not in a ‘fair to poor shape’. These trees are healthy and have been looked after all of their lives. Damage to their root systems due to digging of foundations will destroy these trees.
6. **Access to application** – during the Christmas period, access to the information on the application was not available as the observer was unable to view the documents on their laptop due to the type of computer and the nature of the broadband connection.

## 7.0 **Assessment**

I consider that the issues arising can be assessed under the following headings:

- Principle of development
- Residential amenity of adjoining properties
- Impact on trees
- Taking in charge
- Environmental Impact Assessment
- Appropriate Assessment

### 7.1. **Principle of development**

- 7.1.1. The site is located in an established residential area which is characterised by very long and narrow sites, where a housing scheme for three dwelling units was previously permitted by the Board. It is situated within walking distance of the town centre (1.5km) and the wide range of facilities on offer. National policy, as expressed in the National Planning Framework (2018) and Sustainable Residential Development in Urban Areas Guidelines (2009) 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 noted that Variation 4 of the Killarney Town Development Plan (adopted Dec. 2018) has zoned the site as 'Established Residential' in the Zoning Map D, which relates to residential lands within walking distance of the town centre. Infill development is also encouraged by the policies and objectives of the Kerry County Development Plan and the Killarney Town Development Plan provided that such development has regard to the character and amenities of adjoining development. It is considered that the appeal site is one which could support increased densities in principle, in accordance with national and local policy.

- 7.1.2. The principle of development on the site for three detached houses was established by the Board in 2010 under 235868, which was extended until 21<sup>st</sup> May 2020. This permission had established that the site represented underutilised serviced and zoned lands, and that the development was similar in scale and form to the established pattern of development to the east and would not prejudice development of zoned lands to the west. It was further noted by the Inspector, that notwithstanding several previous refusals of permission by the Board, the reasons for refusal had not been based on an objection to increased density in principle, and that the impact of a particular development on the character and amenities of the area should be considered on the merits of each individual proposal. In that instance, the Board considered that the proposed dwelling units would not adversely affect the residential amenities or character of the area and the Board granted permission.
- 7.1.3. The issue of piecemeal/disorderly development has been raised in both the current appeal and in several of the previous appeals to the Board. It is noted that the issue had been addressed by the Inspector (235868) when it was considered that the design and layout of that development would not have unduly constrained future development on lands to the west and that the development potential of lands to the east had been exhausted by means of permitted and existing development. Although the Inspector had noted that it may be considered preferable that the site be developed in conjunction with the lands to the west, the loss of the mature trees on this boundary had already been established as an objective of previous planning decisions on the site, which would be an impediment to any such strategy. As such,



the proposed development of the subject site was not considered to be piecemeal or disorderly development.

- 7.1.4. In the interim, the Board has refused permission more recently for a development of four houses on the site (ABP.300033-17). This development involved the demolition of the principal dwelling on the site and the construction of four 1 ½ storey detached houses, with a similar layout to the proposal granted under 235868, but with an additional house on the lands to the southwest of Bramblewood House. The first reason for refusal related to the siting of the proposed houses close to existing houses to the east, particularly Units 3 and 4 to the northwest and southwest of Bramblewood House. It was considered that the proposal would have seriously injured the residential amenities of that property by reason of visual obtrusion, overlooking and overshadowing. The second reason for refusal related to the restricted width of the site, the potential for deleterious impact on the existing mature trees on the western boundary and the disposition of the proposed houses relative to the lands to the west, which it was considered would have amounted to overdevelopment of the site and would have militated against the future development of the lands to the west. Objection was also raised to the demolition of the existing house and the creation of a gap in the streetscape of Woodlawn Road.
- 7.1.5. It is currently proposed to construct two dwellings and the existing dwelling to the north has been retained, refurbished and is excluded from the site boundary, which addresses the issue of the gap in the streetscape. Although the site area (0.28ha) is less than the site area for 235868 and 300033-17, (0.45ha), the density of the proposed development is much lower than that of both the permitted and the refused developments on the site to date. It is also noted that the design of the proposed dwelling units is very similar to that of the recently refused scheme, and is much more conventional. The overall layout is similar to each of the schemes previously before the Board, but the siting and design of the proposed dwelling houses has now been altered with a view to addressing the matters that had arisen in the previous schemes in relation to impact on amenities and retention of trees on the boundaries. These matters will be discussed in more detail in the following sections. Having regard to the planning policy framework for the area, to the established pattern of development in the vicinity of the site, to the previous planning history on the site and

to the overall layout of the proposal, it is considered that the development of two detached units on this site is acceptable in principle.

## **7.2. Residential amenity of adjoining properties**

- 7.2.1. The site is a backland, infill site which is constrained principally by reason of its narrow width, the presence of mature trees particularly on the western boundary and by the siting of existing development adjacent to the eastern boundary. The lands to the west and south are in agricultural or recreational/amenity use and are zoned Residential and Agricultural, respectively. The appellant's lands comprise a working farm and although zoned residential, do not appear to have been the subject of a planning application for residential development to date. Notwithstanding this, the Board has previously considered the potential to militate against the future development of these lands as a material consideration. The lands to the east, although developed in a similar fashion to that currently proposed on the subject site, contains a 2-storey dwelling which has windows facing both north and west, which must be considered in terms of impact on amenity.
- 7.2.2. Due to Government Guidelines on physical distancing during the Covid-19 pandemic, my inspection did not include viewing the site from Bramblewood House. However, the Observers had provided photographs from their property and the photographs from the inspection carried out in January 2018 (300033-17) provide adequate information to carry out an assessment of the submitted plans and documents, including the tree survey.
- 7.2.3. It should be noted that the previously permitted scheme (235868) contained large glazed areas at first floor level (living rooms) including balconies, which would have had the potential to overlook the adjoining sites to a much greater degree than the bedroom and landing windows on the west facing elevation of the current proposal. However, the retention of the mature trees on the western boundary would also mitigate any potential loss of privacy. It is considered, however, that the large rectangular landing window should be required to be fitted with frosted glass, as its function is to provide light, which would ensure that there would be no issue of overlooking to the west. Subject to this amendment, it is considered that the development as currently proposed would not prejudice the future development of the lands to the west.

- 7.2.4. The eastern elevations of the current proposed units do not contain any windows at first floor level, apart from a high level window in Unit 1. The siting of the proposed units is also significantly improved compared with both the permitted and the refused schemes relative to Bramblewood House, and Unit 4 has been omitted entirely. The formerly proposed Unit 3 (300033-17) was sited c.4 metres closer to the adjoining dwelling than the currently proposed Unit 2. In addition, the south-facing first floor bedroom window in this Unit 3 (referred to in the Inspector's report) has been omitted. This bedroom is now lit (Unit 2) by a window on the northern elevation. All windows on the northern and southern elevations are designed as oblique-angled windows to avoid overlooking of adjoining properties.
- 7.2.5. The omission of Unit 4 (300033-17) and the siting of the proposed Unit 2 to the northwest of Bramblewood House means that there is no prospect of overshadowing of the Observer's dwelling due to the orientation and separation distance. It is unlikely that the siting of Unit 2 would result in any significant increased overshadowing of the garden area in front of Bramblewood House either due to the presence of the long-established mature trees on the eastern boundary of the site. It can be seen from the survey drawing (Casey/08/01) together with the Tree Survey Report that there is a row of five trees, (Nos. 392-396, which comprise four Birches and one Oak), within the appeal site which are located alongside the boundary in the space between the front of Bramblewood House and the rear elevation of Unit 2. A further Oak tree (397) is located further to the north near the row of conifers in the front garden of the Observer's House. Any shadow from Unit 2 would be at the northern end of the front garden and would not give rise to any significant loss of amenity to the adjoining property.
- 7.2.6. It is considered, therefore, that the reduction in density, (and specifically the omission of Unit 4), combined with the significantly reduced area of glazing from living areas and balconies and the increased separation distances would result in a substantial improvement in terms of the protection of privacy and daylight over the scheme previously permitted, and furthermore would address the concerns relating to overlooking and overshadowing raised regarding the scheme refused by the Board in 2018. It is further considered that the proposal would not result in overdevelopment of the site or in a visually obtrusive element in either the

streetscape or when viewed from adjoining properties, and would not injure the visual amenities of the area.

### 7.3. Impact on trees

- 7.3.1. The appellant and the observer have both raised concerns regarding the impact of the proposed development on the mature trees on both the western and the eastern boundaries of the site. The Landscape Plan (Michael Ballack Landscaping) and Tree Survey indicate that the majority of the trees on these boundaries are to be retained and that all trees will be protected during construction. The perimeter of the garden for Unit 2 is to be reinforced with beech hedging with an ultimate height of 15-20m.
- 7.3.2. The siting of Unit 2 is such that the foundations for this dwelling would not impact on the row of five trees referred to in 7.2.4 above. The Oak tree (No. 397) is directly adjacent to the eastern elevation of Unit 2 and would therefore be more vulnerable. The condition of this tree is described as 'Fair' but is not earmarked for removal (Category 'C' – low quality but could be retained). The comments in the Tree Survey Schedule are "on a raised ditch. Wire attached. Ivy growth attached. Near Cables. Could become unstable". It is proposed to remove the ivy and wire and to reassess after the ivy growth has died off. It is considered that this tree should be retained if possible, but if it has to be removed, the proposed beach hedging will soften and screen the development from the adjoining lands to the east. The trees adjacent to Unit 1 on the eastern boundary are stated to be in poor condition (Nos. 406-408) but are still proposed to be retained.
- 7.3.3. The trees on the western boundary form an almost continuous screen of mature trees that are composed mainly of Oaks and Birches. Their retention and protection have been identified in previous decisions as being of great importance to the maintenance of the character and amenity of the area as well as for screening the development. The trees that are closest to the proposed dwelling houses are Nos. 345 (Unit 1) and 362, 363 and 364 (Unit 2). These trees are described as being poor-fair in the Tree survey but would still be retained. However, it is the impact of the driveway on the future of the trees that is of most significance as it extends along the full length of the boundary with approx. 30 adjacent trees. The developer intends to use a Terram Bodpave 85 system with gravel infill and a tree root protection mat

along the driveway, which it is stated will ensure that the trees are protected from damage during construction and from its use as a driveway.

- 7.3.4. The same system was initially proposed under 235868 and was expressly permitted by the Board, in favour of the revised system that had been requested by the P.A. at the time, which would have involved excavation of a trench and laying a base course over it, and then paving on top. It is considered that the proposed system, which is a porous, plastic, cellular paving grid with a gravel infill is suitable for the proposed development and would protect the root system of the trees on the western boundary.
- 7.3.5. Given that the proposed development seeks to retain the majority of trees and to put in place measures to protect the trees along the western boundary, it is considered that the proposed development would not result in any significant loss of trees. It is also noted that the landscaping proposals include the reinforcement of screen planting along the boundaries in the vicinity of the proposed dwelling units. Should the Board be minded to grant permission, however, it is considered that a condition should be attached to any such permission requiring the developer to put measures in place to protect all trees that are to be retained on the site from damage during construction.

#### **7.4. Taking in charge**

- 7.4.1. Objection has been raised to the provision of an access gate from Woodlawn Road to serve the development mainly on the basis that the provision of connectivity through the site was desirable and in accordance with the planning policies for the area. There has also been some debate during the course of previous decisions regarding the need for and merits of taking the development in charge. It is noted that the developer does not intend to seek to have it taken in charge and that the P.A. has not sought to do so in this instance (Condition 19 of P.A. decision).
- 7.4.2. The opposite view had been taken in respect of the two most recent proposals (235868 and 300033-17). This was partly due to the advice contained in Circular PD1/08 but also because the P.A. had sought to have the development to accord with the DOELG's Site Recommendations for Works in Housing Areas, which would require the width of the driveway to be increased to 5.5m. The Inspector (235868)

had pointed out that in order to increase the driveway width to 5.5m would have endangered the trees on the western boundary that had been identified as being necessary to retain. On this basis and given that the development involved the use of shared facilities (parking, bin storage etc), it was recommended that the private management of the shared facilities would be in order, and the Board included a condition (8) to this effect. However, in the Board Direction (300033-17), it was pointed out that there had been material changes in planning circumstances and guidance/legislation in the meantime, and that

“it is now national policy that “house only” developments should not be privately managed, but should be developed in such a manner as to be taken in charge by local authorities. It is also noted that the former roads standards set out in the “Recommendations for Site Development Works for Housing Areas” (which inter alia required road widths of 5.5 metres) have been replaced by the Design Manual for Urban Roads and Streets (which permit flexibility in relation to road widths, turning radii and provision for “home zones” and other shared surface arrangements)”.

- 7.4.3. It is considered that the unconventional shared driveway, together with the shared parking and public open space, warrant consideration of a private management arrangement as opposed to being taken in charge. The nature of the shared driveway and its specific methodology, which is designed to ensure the protection of the trees along the western boundary, also lends support to such an arrangement. In this regard, it should be noted that the Terram Bodpave 85 system is described in the literature as being suitable for lightly trafficked roadways which are used on an occasional basis. If the road were to be taken in charge, it could be used to access the lands to the south or the west of the site at some point in the future, which would be likely to endanger the trees identified for protection. It is considered, therefore, that an exception should be made in this instance and that the proposed development should be subject to a private management company, notwithstanding the national policy that such development should be taken in charge.

## 7.5. Other matters

- 7.5.1. **Reference to Planning Authority Reports** - The appellants consider that the P.A. reports did not give sufficient weight to certain concerns raised in the grounds of

objection to the P.A. However, it is considered that all of the matters raised in both the objections to the P.A. and in the grounds of appeal and observations on the grounds have been addressed above.

## 7.6. **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.

## 7.7. **Appropriate Assessment**

- 7.7.1. The site is located within 100m 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), which are situated to the northwest and west. The site is also located c.100m to the north of the Flesk River which forms part of the SAC and which flows in a westerly direction into Lough Leane. There are no known hydrological links to the protected sites. The gradient of the site is quite gentle and falls to the north towards Woodlawn Road, and away from the River Flesk. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on 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 'Established 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, 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:-

The landing/stairwell windows on the western elevations at first floor level of the dwelling units shall be fitted with obscure glazing.

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. The emergency access route along the western boundary of the site together with the shared car parking area and emergency turning area shall be constructed prior to the commencement of other works on the site. The works for the proposed route shall include the following details:-

- (a) The trees and hedges, as well as the stone and sod ditch, along the route identified in the Survey Drawing and Landscaping Layout submitted to the Planning Authority on 19<sup>th</sup> November 2019 shall be retained.



- (b) The access route shall be constructed without excavations which would impinge on the roots of the trees and hedges along the western boundary of the site in accordance with the specifications submitted to the planning authority with the application and as specified in the planning permission granted by the Board under Ref. PL63.235868.
- (c) The finished surfaces of the access route, car parking and turning area shall be completed prior to the occupation of any dwelling house.
- (d) A person with an appropriate professional qualification shall certify that the access track and all associated site works and underground services shall be completed to the satisfaction of the planning authority without significant disturbance or injury to the trees or hedges along the western boundary of the site and such certification shall be submitted for the agreement of the planning authority prior to the occupation or sale of any of the houses hereby permitted.

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

**Reason:** In the interest of the residential amenity and orderly development.

- 4. 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.

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

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

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

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

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

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

8. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

9. 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 dwelling units 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.

10. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the proposed dwelling units are made available for occupation

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

11. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

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

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

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

13. The landscaping scheme on the drawing entitled Proposed Landscaping Layout Plan as submitted to the Planning Authority on the 19<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.
  - (a) Prior to the commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at a minimum a radius of 2 metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
  - (b) Any construction equipment, machinery or materials that are currently stored in the vicinity of the trees to be retained shall be removed within one month of the date of this order.

(c) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

**Reason:** To protect trees and planting during the construction period and in the interests of visual and residential amenity.

15. 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.

16. 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.

17. 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 and off-site disposal of construction/demolition waste.

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

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, 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 of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

19. 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.

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

**21<sup>st</sup> May, 2020**