



An
Bord
Pleanála

Inspector's Report ABP 307560-20

Development	Construct two classrooms with ancillary accommodation, internal alterations, external signage and additional car parking and associated site works
Location	Killarney Community College, New Road, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/813
Applicant	Kerry Education Training Board
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	Portal Asset Holdings
Observers	None
Date of Site Inspection	2 nd October 2020
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.1. The site is located at the western end of New Road in the north-western part of the town of Killarney. It is situated on the north-western corner of the Port Road and New Road, and has frontage to each road. It is a large site with a stated area of 3.744ha. New Road is a long straight road with an East-West orientation, which branches off Rock Road near the centre of town, and which accommodates several schools and colleges and a number of residential properties. Port Road is also a long straight road which links the N72 (bypass) to the north with Cathedral Place to the south. There are individual residential properties on the eastern side and the western side consist of the Demesne of the National Park.
- 1.1.2. St. Brendan's College is located on the opposite side of New Road and the Presentation Monastery Primary School is located immediately to the east of the Community College. Further to the east on New Road is the Mercy Convent School complex, but there are some individual residential properties on the lands between the Monastery and Mercy convent school sites. The lands adjoining the site to the north and north-east consist of a greenfield site which is zoned for residential development. These lands are under the control of the appellant. It is stated in the submissions that this site is the subject of a pre-application proposal for a housing development of c. 200 units on these lands, which is to form an SHD application to the Board.
- 1.1.3. The site consists of a large Scheel building complex which is located on the south-western section, with sports grounds to the north and north-east and with landscaped grounds providing a buffer between the school building and Port Road and New Road, respectively. The site is accessed from New Road by means of an automated barrier and pedestrian entrance. The boundaries with Port Road and New road are defined by a stone wall and there are mature tree lines inside the walls. The north-western boundaries are with private residential properties and comprise mature hedgerows and trees, whilst the boundary with the primary school is defined by a metal security fence. The remaining boundary is with the residentially zoned lands to the north/north-east, and this is formed by a stream with mature hedgerows. The grounds of the appeal site side of this boundary are laid out as sports fields.

2.0 Proposed Development

- 2.1.1. The proposed development, as originally submitted to the P.A. (31/07/19), sought permission to construct an extension comprising a two classroom ASD unit to the front/side of the school, together with some internal alterations, additional signage and some additional car parking facilities. ASD stands for Autism Spectrum Disorder. The extension is proposed at the north-western corner of the building complex and would face Port Road. It is intended to provide two additional classrooms with ancillary resource room accommodation, which would form part of the ASD unit. A recently permitted extension (P.A. Ref. 14/205451) on the northern elevation of the school building is situated to the east and the two extensions would form one contiguous addition to the school building. This extension was partially completed at the time of my inspection.
- 2.1.2. The proposed extension is single-storey with a stated floor area of 355sq.m. It has an A-symmetrical roof with two ridges and a valley, which will be clad with dark coloured fibre-cement panels. The proposed signage would be attached to the elevation facing Port Road. The proposed development includes the provision of an additional car parking area to the rear of the school building with an associated turning head, providing an additional 16 no. parking spaces. The parking area will be accessed from the controlled existing vehicular entrance from New Road. The turning head is a fire-truck turning head with a set-down area adjacent. The proposed development will necessitate the removal of a mature oak tree, (No. 179), and a Tree Surgeon's report accompanies the planning application. It is proposed to retain a second mature oak tree (No. 180) immediately adjacent and to put in place a Root Protection Area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission subject to 7 conditions including:

Condition 5: Advertisement structure to be reduced in size and relocated to the SW corner of the campus.

Condition 7: Good site management to prevent contamination of River Deenagh.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's initial report (20/09/20) considered that the proposed development was generally satisfactory. It was noted that the previous permission (14/205451) had included a condition requiring a comprehensive signage scheme to control the haphazard signage on the site, but that no details had been submitted. It was also noted that the Town Engineer had requested that further information be sought in respect of footpaths and cycle ways.

It was requested that **further information** (20th September 2019) be provided in respect of the following

- Revised plans addressing the requirement (under 14/205451) to provide a comprehensive signage scheme for the school site with full details of the proposed signage.
- Details of how it is proposed to address Objective 8.1.4 of the Killarney Town Development Plan which states "To promote the development of a coherent network of routes and facilities for pedestrians and cyclists with equal access to all". Details of how footpath/cycleways are to be provided for students attending the educational campus in order to allow for interconnectivity between the campus and its surrounding environs. Consideration was particularly required in respect of connectivity between the campus and the undeveloped zoned lands to the north.

3.2.2. The **Further Information Response (13th March 2020)** was considered to constitute significant additional information and republication was required. The re-advertisement took place on 16th March 2020 and new site notices were erected on 26th March 2020. A further submission was received from the third-party appellant on the 7th April 2020, which reiterated the concerns raised in the original submission regarding the failure to provide for a walkway through the campus. The FI response included two revised drawings (644-Prfi-211 and 644-Prfi-212).

Signage – it is proposed to erect a free-standing sign with two panels directly adjacent to the Port Road boundary. It is suggested that the text of the signage could be changeable to provide current information on classes available, which would eliminate the need for temporary signage.

Footpath/cycleway – reference was made to a meeting with the P.A. to discuss this item on 23/10/19. It was stated that subsequently, on 3rd December 2019, the matter was considered by the Board of Kerry Education Board to review possible options. It is stated that “...it was agreed that the needs of the School are the primary concern of the Board and as per Section 12(2)(n) of the ETB Act 2013, the ETB Board decision was not to grant permission for access to the school site for the creation of a walkway (pedestrian access)..” Serious concerns were raised regarding matters such as site security, adherence to child protection regulations and possible anti-social behaviour. It was therefore decided not to grant permission for access to the school site for the creation of a walkway or access of any nature through the school grounds.

Connectivity - In order to address **Objective 8.1.4** of the KTDP, it is proposed to construct a new cycle entrance and bike shelter adjacent to the existing pedestrian entrance from New Road. It was stated that this revised proposal, together with promotion of walking and cycling by the school management will help to encourage and facilitate pedestrian and cyclist access to the school.

- 3.2.3. **Area Planner** - The FI was generally considered to be satisfactory. However, it was considered that the sign should be relocated to the corner of New Road and Port Road rather than half-way along Port Road and that it should be reduced in size. The reasons put forward by the applicant for not wishing to provide a walkway through the site were noted. It was considered that Objective 8.1.4 of the KTDP is a general policy objective which encourages the provision of cycleway and walkway facilities, and that there is no Specific Objective to this effect relating to the school site. As such, it was considered that there was no justification for refusal of a proposal to provide 2 no. ASD classrooms at the site. The observations of the Town Engineer, who regretted the lack of agreement on the matter, and the concerns raised by the third party were noted.

3.2.4. **Recommendation** - A **grant of permission** subject to conditions was recommended.

3.3. **Other Technical Reports**

3.3.1. **Municipal District Engineer** (20/09/19) – It was pointed out that Objective 8.1.4 of the Killarney Town Development Plan is to promote the development of a coherent network of routes and facilities for pedestrians and cyclists with equal access to all. Details are requested as to how this objective is to be addressed in terms of the provision of cycleway/footpath facilities to allow for interconnectivity between the campus and its surrounding environs, with particular reference to connectivity with the residential lands to the north.

3.3.2. **County Archaeologist** (19/08/19) – there are no recorded monuments listed in the Record of Monuments & Places in proximity to the proposed development and the site is previously disturbed. No mitigation required.

3.3.3. **Chief Fire Officer** – no objection. DAC and Fire Certificate required.

3.4. **Prescribed Bodies**

3.4.1. None.

3.5. **Third Party Observations**

One objection was received by the P.A. from the appellant (Portal Asset Holding Ltd.) which is in the process of preparing an SHD application for 200 houses and a creche on the lands immediately to the north/north-east. The objection and attachments are on file for the Board's information. The issues raised are comparable to those set out in the 3rd Party appeal received and summarised in section 6 below. The concerns raised related to the following issues

- Need to address issue of reducing vehicular transport and congestion. The delivery of cycling and pedestrian improvements on Port Road is critical to the positive development of Killarney.
- Currently preparing an application for 200 housing units on adjoining site and it is inevitable that the majority of children from the development will attend the school and the adjoining primary school. The third party has been

requested as part of the Pre-application SHD process (S247) to provide pedestrian and cycle connectivity between the housing site and the educational lands.

- Two options are proposed. Option A involves access through the ETB lands to the Port Road and Option B provides direct access to the Presentation Monastery School. These options include the construction of up to 2 footbridges over the stream.

4.0 Planning History

- 4.1.1. **14/205451** – planning permission granted for minor revisions to 13/5411. The revisions would increase the overall floor area of the extension to provide enlarged resource rooms, and the previously granted store would be omitted. The overall increase in floor area would be 34.5sq.m. The proposal included plans for a composite sign in the southwest corner of the site. Condition 7 required the erection of the sign prior to the first opening of the proposed extension.
- 4.1.2. **13/5411** – planning permission granted for single-storey extension to rear of school to provide 3 resource rooms, 1 common room, 1 no. store and conversion of boiler room to library, art room and ancillary accommodation. Proposal included demolition of a store and the construction of an external glazed link and alterations to the façade. Condition 7 required a comprehensive signage scheme (in one location) to cover the ad-hoc and temporary signage associated with the activities on site to be submitted and agreed prior to commencement of development.
- 4.1.3. **01/203705** – permission refused for erection of a prefabricated classroom and construction of a new car park and site entrance onto Port Road in July 2001. The reasons related to visually intrusive development at a strategic site on a major tourist route and its proximity to architecturally important buildings and the creation of a traffic hazard on a heavily trafficked tourist route on the approach to the town.

5.0 Policy Context

5.1. National Planning Framework 2018

NP Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed development and integrating physical activity facilities for all ages.

5.2. Smarter Travel, A Sustainable Transport Future, A New Transport Policy for Ireland 2009-2020

This policy document sets out a range of policy measures designed to encourage smarter travel, deliver alternative ways of travelling, improve the efficiency of motorised transport and ensure integrated policy delivery. It includes key goals and national targets for 2020. One of the goals is to create a strong cycling culture and to ensure that all urban and rural area will be cycling friendly, particularly in respect of short trips. It is stated that next to walking, cycling will be the most popular means of getting to school.

5.3. Kerry County Development Plan 2014

Chapter 7 – Transport and Infrastructure –

Section 7.2.3 – Cycle ways and safe pedestrian routes should be encouraged as part of the design of residential, educational, employment and recreational development.

RD14 – Promote the sustainable development of walking, cycling, public transport and other sustainable forms of transport such as car-sharing and car-pooling, as an alternative to the private car, by facilitating and promoting the development of necessary infrastructure and by promoting initiatives contained within “Smarter Travel, A Sustainable Transport Future 2009-2020”.

RD29 – Promote the sustainable development of the public footpath network, the walking and cycling routes and associated infrastructure in the county, including where possible the retrofitting of cycle and pedestrian routes into the existing urban road network and in the design of new roads.

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.

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.

The site is shown on the New Killarney Zoning Map A (Variation 4) as being located in an area zoned as 'Existing Built-Up Area' (M4).

Objective 8.4.1 – To promote the development of a coherent network of routes and facilities for pedestrians and cyclists with equal consideration for access to all.

Policy INFRA-04 sets out the associated policy statement a. to m. inclusive. The most relevant policies are as follows:

c) To create pedestrian priority concepts, cycle lanes and off-road cycle paths as required including proposed routes outlined in blue on the infrastructure map during the lifetime of the Plan. (Note the Infrastructure Map shows a pedestrian and cycle route for New Road and Port Road).

g) To ensure that all new developments provide Traffic Management Plans making to incorporate provisions and safety measures for pedestrians, cycle routes and access for all through their developments.

h) To require new development roads to connect to existing developments and create a permeable interconnecting series of routes that are easy and logical to navigate around.

j) to liaise with landowners in preparing a scheme for roadways, pedestrian routes and cycle paths throughout the town during the lifetime of the plan.

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**

The site is located within c.25m of Killarney National Park, Macgillicuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Third-Party Appeal has been received from the developers of the residentially zoned lands to the immediate north and north-east of the site. The submission can be summarised as follows:

- **Connectivity with zoned lands** – in the absence of connectivity provisions between the KETB campus and the undeveloped zoned residential lands to the north, this decision is contrary to the policies and objectives of the P.A. and the proper planning and sustainable development of the area. It is requested that the board apply a suitably worded condition which provides for the inclusion of such linkages in the interests of achieving a sustainable form of development which reduces car dependency in Killarney and maximises modal shift to cycle and pedestrian activity.
- **Consistency in approach** – The P.A. has been steadfast in its approach to date in its commitment to the implementation of Objective 8.1.4., specifically in relation to interconnectivity between the campus and the zoned lands to the north. This is evident from the observations of the Town Engineer in respect of the current application and in respect of the Section 247 process in relation to the proposed development of the lands to the north for housing (200 units and a creche). It is understood that Objective 8.1.4 is intended as a means to implement the Town Landscape Strategy as part of the Killarney Urban Masterplan 2005 and it is a missed opportunity not to positively influence the day-to-day life in Killarney.

- **Connectivity and safety** – the concerns of the KETB regarding safety of pupils is misplaced and do not take account of the NTA’s Permeability Best Practice Guide in relation to schools and ignore the safety of pupils from a road safety point of view. The NTA policy sees schools as a critical element in facilitating and encouraging more children to walk and cycle to school. The General Design Guidelines for Schools prepared by the Dept. of Education and Skills recognises the role that school grounds can play in the neighbourhood and in providing for connectivity including the provision of natural routes through the school site for footpaths.
- **Security and safety concerns** – The concerns regarding security, child protection and anti-social behaviour could easily be resolved by means of appropriate design measures and adequate passive surveillance. The connection could also be delivered in an attractively landscaped manner.
- **Road safety issues** – there is a problem with traffic congestion in Killarney and there have been a number of pedestrian road traffic accidents on the Port Road. The area contains a cluster of schools and the Town Plan and the Masterplan have an objective to provide for an alternative safer, off-road pedestrian route along the rehabilitation of the Folly Stream, “linking park along the green urban route from the town centre to the northwest” which would open up “a new attractive pedestrian route through a formerly neglected backland (2005 Masterplan).
- **Alternative cycle path** – The proposed development should act as a positive enabler of change to unlock the delivery of this objective by providing a crossing point on the Folly stream to service the three schools along New Road. The alternative proposal for a 20m wide cycle path from the pedestrian entrance on New Road is inappropriate as it would force children to cycle along the congested New Road and/ or on the footpath, with associated road safety risks. It does not address the need to prioritise safe travel to and from school, which is a net contributor to the vehicle congestion in the area.
- **Principle of development** – The appellant is supportive in principle of the proposal to provide new classroom units but consider the lack of pedestrian/cycle connectivity with the lands to the north is a missed

opportunity to deliver tangible change with respect to sustainable travel in Killarney.

6.2. Response from first party

A response was received from the first party on 12th August 2020. The response is generally in the form of a rebuttal of the grounds of appeal. It was pointed out that the proposed ASD unit is intended for the most vulnerable children in the school. In terms of planning policy, it was noted that the Masterplan has guided statutory plans for the area, and that Policy INFRA-04(c) identifies a pedestrian and cycleway for New Road and Port Road. The following points of note were made -

- **Position of KETB** – it is acknowledged that discussions took place between the first party and the third party in relation to the substantive issue in the grounds of the appeal. However, decisions relating to the disposal or holding of property is a reserved function of the KETB and following a lengthy and detailed consideration of the matter in March 2019, the Board decided that in the best interests of the school, not to grant permission for access to the school site for the creation of a walkway. This decision was made on the grounds of security, anti-social behaviour and child protection. The first party was made aware of the decision in April 2019. During the course of the planning application, a FI request was made and further discussions were held between the First party and the P.A. Subsequently, a further Board meeting was held to examine options for the provision of pedestrian and cycle connection through the school lands. The Board reaffirmed its decision not to grant access through the school lands but decided to provide a new cycle entrance and bike shelter from New Road. In addition, the applicant has committed to promoting walking and cycling access to the school. It is considered that the P.A.'s decision is reasonable and appropriate.
- **Planning policy** – there is no specific objective to provide a pedestrian or cycle link through the school lands. There is provision in the Killarney Town Development Plan for a pedestrian and cycle route along both New Road and Port Road, which is the extent to which Objective 8.1.4 applies to the site. The applicant has made provision for a new cycle entrance and bike shelter in

response to this policy objective. The reference by the appellant to a boardwalk along the Folly Stream does not include any reference to the subject lands and relates specifically to the linkage of public open spaces with the Town Centre. The omission of a proposal to provide for pedestrian/cycle connectivity with the lands to the north cannot be considered to be contrary to current planning policy for the area. The appeal should therefore be dismissed as being without foundation.

- **Legislative provisions and Development Management Guidance** – The Development Management Guidelines for P.A.s (2007) advise that planning conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable. If a permission is not directly related to a development to be permitted, the condition may be ultra vires. Furthermore, Section 34(4)(a) of the Planning and Development Act 2000 (as amended) provides for the imposition of a condition regulating the development or use of adjoining lands, but the said lands must be under the control of the applicant.
- **Appropriateness of suggested condition** – The proposed development is a minor development to provide 2 special needs classrooms within the school grounds. The proposed link is unrelated to the proposed development. There is no justification for the pedestrian/cycle connection with the lands to the north, which remain undeveloped. There is no specific objective for such a link in the development plan. It is submitted that the suggested condition would be ultra vires and unenforceable. The applicants have given due consideration to the proposal and have rejected it on the robust grounds of security, child protection and anti-social behaviour and it would be a major disbenefit to the school.
- **Undeveloped nature of third-party lands** – there is little clarity as to whether the applicant has entered into a formal SHD pre-application consultation with the Board. It is submitted that the proposed connectivity through the school lands is a develop-driven proposal and it is unreasonable for the third party to attempt to force the first party into an arrangement that would be a disbenefit to the applicant, particularly as the lands in question remain undeveloped with

no planning permission in place and no formal planning application being submitted.

6.3. **Planning Authority Response**

The P.A. responded to the grounds of appeal on the 12th August 2020. It is stated that the assessment of the application is fully set out in the Planner's report. In response to the claim in the grounds of appeal that the proposed development is contrary to the Killarney town Development Plan and National Policy, it is stated: -

The policy set out at Section 8.1.4 of the Killarney Town Development Plan (KTDP) is a general policy that encourages the provision of pedestrian and cycle way linkages. There is no specific objective in the KTDP requiring a pedestrian link through this school site. It was considered that, in the absence of such a specific objective, it would be inappropriate to refuse planning permission for the proposed classroom ASD unit.

7.0 **Assessment**

I consider that the issue arising from the appeal relates to the absence of proposed pedestrian and cycle link within the school grounds to connect the zoned development lands to the north to the town via New Road and/or Port Road. This matter can be assessed under the following headings:

- Compliance with national and local policy
- Appropriateness of a condition as suggested by the third party
- Environmental Impact Assessment
- Appropriate Assessment

7.1. **Compliance with national and local policy**

- 7.1.1. National policy, as expressed in the National Planning Framework (2018) and Smarter Travel, amongst several other Government policies, emphasises the need to facilitate more sustainable travel patterns including reduced need for car journeys and the promotion and encouragement of more walking and cycling. Kerry County Development Plan (2015 – 2021) and Killarney Town Development Plan 2009-2015

(as extended) are also very supportive of sustainable travel patterns and have many policies and provisions to provide for, promote and facilitate improved pedestrian pathways, cycleways and improved connectivity between new development and service, facilities and amenities, in accordance with national policy and local policy. In this context, had the applicant proposed a pedestrian/cycle path through the school grounds to connect a future residential development site with the schools on New Road and with the Town Centre, this would have been in accordance with such policies. However, this is entirely different to a requirement to comply with policies and objectives set out in statutory plans for the area.

- 7.1.2. The Killarney Town Development Plan (as varied in Dec. 2018) has an **Objective 8.1.4** which is contained in the Transport and Infrastructure Chapter which reads as follows:

To promote the development of a coherent network of routes and facilities for pedestrians and cyclists with equal consideration for access to all.

Policy INFRA-04 sets out the associated policy statement. This proposes the creation of pedestrian priority concepts, cycle lanes and off-road cycle paths such as those indicated on the Infrastructure Map in the KTDP, which includes an indication of such facilities to be provided along New Road and Port Road (c). In addition, Policy Infra-04 seeks to ensure that all new developments provide Traffic Management Plans incorporating provisions and safety measures for pedestrians, cycle routes and access through their developments (g) and to require new development roads to connect to existing development and to create a permeable interconnecting series of routes (h). It further indicates that it is proposed to liaise with landowners in preparing a scheme for roadways, pedestrian routes and cycle paths throughout the town during the lifetime of the plan (j). There is no specific objective relating to the school grounds or to the appellant's lands to the north. Similarly, the policies in the Kerry County Development Plan (RD14, RD29 and US-4) all seek to 'promote' pedestrian and cycle facilities.

- 7.1.3. It is clear from the wording of these policies and objectives that whilst there is an identified need to facilitate and promote the development of a network of routes and facilities for pedestrians and cyclists, the means by which such objectives are to be achieved is by the provision of facilities by the planning authority itself, Infra-04(c), or

by liaison with landowners, and by promotion and facilitation, and not by mandatory requirements. The requirement for Traffic Management Plans (Infra-04(g)) relates to **new** development and the requirement and for the creation of permeable interconnecting series of routes (Infra-04(h)) relates to **new development roads**. The appeal site relates to a long-established school site which is set within generous landscaped grounds with its own sports facilities on site. The proposed development is for a minor extension to provide for 2 additional classrooms for special needs support. It does not involve the creation of any new roads.

7.1.4. Thus, it is considered that there is no requirement in the Statutory Development Plans for the area to provide for a pedestrian/cycle pathway through the school grounds. As such the proposed development for a small extension to the school, without a specific proposal to provide for pedestrian/cycle connectivity with the lands to the north is not in contravention of any policies or objectives for the area. It is further considered that the proposal to provide for a new cycle entrance and dedicated bike shelter, together with the commitment to actively encourage walking and cycling within the school, is in accordance with the policies and objectives for the facilitation and promotion of routes and facilities for pedestrians and cyclists, and would be a positive development. It is concluded, therefore, that the proposed development comprising an extension to an established school for the purposes of providing additional classrooms is appropriate and would generally be in accordance with the national and local planning policy framework for the area.

7.2. Appropriateness of condition suggested by the appellant

7.2.1. The appellant has requested that the Board apply a suitably worded condition requiring the applicant to provide for the inclusion of such a pedestrian/cycle linkage in the interests of achieving a sustainable form of development which reduces car dependency in Killarney and maximises modal shift to cycle and pedestrian activity. Any such condition would have to be in accordance with the guidance provided in the Development Management Guidelines for Planning authorities (2007), Chapter 7. In general, conditions must be necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable.

7.2.2. A condition such as that suggested would require the provision of a pathway or pathways on lands that are within the control of the applicant (first party) but are

mainly for the benefit of the adjoining landowner. Thus, it is accepted that it would be enforceable, but would not pass the test of reasonableness as the applicant has clearly rejected the idea on very strong grounds of risk to child safety and child protection, the security of the school and the potential for anti-social behaviour. These concerns are considered to be reasonable and justifiable, particularly as the classrooms are intended for children with Autism Spectrum Disorder (ASD), who would be very vulnerable. Although the requirement would be generally in accordance with the policies for the area to improve facilities for walking and cycling, and that this would be particularly relevant to school children, it is not considered to be something that could be insisted upon on the grounds of being related to planning or the development, or being necessary. The applicant's proposal to provide an additional cycle entrance and bike shelter is considered to meet any perceived need for additional facilities.

7.2.3. It is noted that the appellant's site is a backland site with only one small section of road frontage onto Port Road. It is also bounded to the south by a stream which presents a further potential constraint in terms of accessibility. Thus, a proposal to provide a cycle/pedestrian pathway as suggested by the appellant would serve the future development of these lands. This raises the issue of landownership and whether it would be necessary to cede the lands in question, particularly as the applicant has clearly stated that the proposal would represent a disbenefit to the school, or the creation of a right-of-way. Section 7.11 of the DM guidelines relates to conditions requiring the ceding of lands. It is clearly stated that conditions should not be attached to planning permissions requiring lands to be ceded for road widening or other purposes, or to require applicants to create a public right-of-way, or to agree to transfer part of their land to some third party. It is stated that "Conditions of this sort are not lawful". It is further stated that a decision whether to grant or refuse permission should not be contingent of an offer of planning gain.

7.2.4. It is clear, therefore, that should the Board be minded to grant permission for the proposed development, the attachment of a condition such as that suggested by the appellant would be ultra vires and would not comply with the development management guidance for conditions. However, the appellant's lands are bounded by several properties other than the KETB lands, and it would appear that there may

be other alternatives to providing for pedestrian and cycle connectivity with New Road and Port Road in the future.

7.3. **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.

7.4. **Appropriate Assessment**

- 7.4.1. The site is located within 25m 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 west, on the other side of Port Road. 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 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 minor nature of the proposed development, to the location of the site within an established school site in close proximity to Killarney Town Centre, which is zoned 'Established built-up area' in the Killarney Town Development Plan (2009-2015, as extended and varied), 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 13th day of March 2020, 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 proposed advertisement sign shall be reduced in size to a maximum height of 2.6 metres above existing ground levels.
 - (b) The proposed advertisement sign shall be relocated to the south-west corner of the site, within the school grounds behind the boundary walls to New Road and Port Road, as permitted under P.A. Ref. 14/205451).

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The advertisement sign shall be put in place prior to the occupation of the proposed extension.

Reason: In the interest of the visual amenity of the area and of traffic safety and convenience.

3. 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.

4. 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.

5. The landscaping scheme on the site layout drawings as submitted to the Planning Authority on the 31st day of July 2019 and on the 13th day of March 2020, 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.

6. 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.

7. 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.

Mary Kennelly
Senior Planning Inspector

16th October, 2020