



An
Bord
Pleanála

Inspector's Report ABP 312336-21.

Development

Change of use of portion of ground floor of existing house (Bradgate) to Montessori school childcare use, Bradgate adjoins existing Montessori school childcare facility granted under 93/202467 (B) Extend hours of operation from that permitted under 93/202467 from 8.00am – 2.00pm to 8.00am – 6.30pm (C) Elevational changes to rear of Montessori school childcare facility comprising of removal of bay window and replacement with French doors and (D) Create a one bedroom residential unit on the first floor of existing house.

Location

Bradgate, Countess Road, Avenue (Townland), Killarney, Co. Kerry.

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

21273

Applicant

Montessori House of Children

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal

Third Party

Appellants

(1) Timothy and Abina Spillane
(2) Ann Courtney, Michael Hickey &
Grace O'Neill

Observers

None

Date of Site Inspection

4th of May 2023

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.06 hectares it is located on Countess Road in the town of Killarney, Co. Kerry. Countess Road is situated to the south-eastern side of Killarney circa 1km from the town centre. Countess Road is predominantly residential in character. The junction of Countess Road and Rookery Road is situated to the south of the appeal site. Rookery Road contains a mix of separately developed houses. St. Oliver's Primary School is located on Rookery Road.
- 1.2. The site contains a semi-detached two-storey dwelling 'Bradgate' with a floor area of 174.7sq m. It is served by a vehicular entrance which is defined by capped pillars. The driveway is located to the eastern side of the property and the remaining front garden area is surface with gravel. Adjoining the dwelling to the side and rear there is a single storey extension which formerly contained the premises of the childcare facility.
- 1.3. The subject property 'Bradgate' adjoins a two-storey semi-detached dwelling to the west. The neighbouring property to the east is a two-storey detached dwelling "Sallywood".

2.0 Proposed Development

- 2.1. Permission is sought for the following;
 - (a) Change of use of portion of ground floor of existing house (bradgate) to Montessori school childcare use, Bradgate adjoins existing Montessori school childcare facility granted under 93/202467
 - (b) Extend hours of operation from that permitted under 93/202467 from 8.00am – 2.00pm to 8.00am – 6.30pm
 - (c) Elevational changes to rear of Montessori school childcare facility comprising of removal of bay window and replacement with French doors and
 - (d) Create a one bedroom residential unit on the first floor of existing house.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority in an order dated 6th of December 2021 granted permission for the proposed development subject 6 no. conditions. Condition no. 3 states, The Montessori school shall only operate within the hours of 0.800 and 18.30 Monday to Friday. The Montessori school shall provide a maximum of 15 childcare places on any day. A maximum of 15 no. children shall attend the facility regardless of how long they remain in the facility.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority sought further information in relation to how many children will be at the facility at any one time.
- The 1993 permission related to 15 no. children at the facility between 0800 hours to 1400 hours on Mondays to Fridays. Under the terms of that permission there would be a maximum of 15 no. children over a morning session only and therefore there was a maximum number of traffic movements.
- The current application proposes to extend the hours from that permitted to 8.00am to 6.30pm. It is not clear how the extended hours will affect the number of children in the Montessori school over a working day and accordingly the amount of traffic movements to and from the premises.
- You are requested to clarify the maximum of 15 no. children in the facility at any one time but possibly more than 15 no. individual children in the facility any one time but possibly more than 15 no. individual children over the course of the day.
- If a child leaves at 12.30 for example will another child take their place in the afternoon?
- In relation to car parking and access, section 12.58.4 of the Killarney Town Plan 2009-2015 (as extended) refers to Childcare facilities, it states that

Childcare facilities will be assessed on the adequacy of the vehicular and pedestrian access and parking provisions, including an adequate set down/drop off area. The relevant car parking standards for playschools/creches set out in Appendix 3. The applicant was requested to put forward their proposals to comply with the objectives of the Killarney Town Plan.

- Planning Report dated 6/12/2021: The report noted that the applicant confirmed that it is proposed to have no more than 15 no. children over the course of a day. It is proposed to provide 15 full day care service places. Staff numbers are likely to be 2-4 staff. It was concluded that the lengthening of the day session available to parents of the 15 children attending on any day will not have a negative impact upon the amenities of the adjoining residents or the immediate area. The extended opening hours will allow for a less concentrated drop off and pick up times which will help to avoid traffic congestion. Regarding car parking it was considered that the requirement as per the Killarney Town Plan of 4.5 spaces including the requirement for car parking for each staff member is excessive by modern day standards. Three spaces can be accommodated to the front of the site and there has been a Montessori school at the location since 1993 therefore it was concluded that the provision of three spaces in the location within walking distance of Killarney town centre would be acceptable.

3.2.2. Other Technical Reports

KNRDO – no objections

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

- 3.4.1. The Planning Authority received 15 no. of submissions/observations in relation to the application. The issues raised are similar to those set out in the appeals.

4.0 Planning History

4.1.1. **ABP 303927-19 & Reg. Ref. 18/753** – Permission was refused to retain change of use from of house, “Bradgate”, to Montessori school, retention of the increase in the number of students from 15 to 35, retention of the extension of the hours of operation from 8am-2pm to 8am-6pm, and permission to set back the front wall of the property and adjoining residential property of “Sallywood” to facilitate a set down area. Permission was refused for the following reasons;

1. The site of the subject development is located in an area subject to the zoning objective ‘Existing Residential’ in the current Killarney Town Development Plan, where the objective is to provide for and improve residential amenities. Furthermore, it is an objective of the Kerry County Development Plan 2015-2021 to permit childcare facilities in existing residential areas provided that they do not have a significant impact on the character or amenities of an area, particularly with regard to car parking, traffic generation and noise disturbance, and to require the retention of a significant residential element where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses (Objective SC-23). Having regard to the significantly increased scale and intensification of the facility over that which was permitted under planning permission register reference number PP93/2467 (An Bord Pleanála reference number PL63.091650), and to the removal of all the residential use within “Bradgate”, it is considered that the development for which retention is sought seriously injures the amenities of residential property in the vicinity, particularly by reason of incompatible on-street parking and traffic generation, and directly conflicts with the Development Plan objective by the removal of the residential use in the building. The development for which retention is sought is, therefore, contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the subject site on the heavily trafficked (both vehicular and pedestrian) Countess Road, immediately adjacent the Countess Road/Rookery Road junction, and the significant deficiency in the provision of on-site car parking, it is considered that, notwithstanding the provision of

parking bays / set-down area across the frontage of “Bradgate” and “Sallywood”, the development for which retention is sought, together with the proposed parking bays / set-down area, would generate conflicting traffic movements and on-street parking and would, thereby, endanger public safety by reason of traffic hazard and obstruction of road users, including vulnerable pedestrian users of the adjacent footpaths. The subject development would therefore, be contrary to the proper planning and sustainable development of the area.

4.1.2. **ABP PL249011 & Reg. Ref. 16/647** – Permission was refused for retention, reconfiguration and extension of Montessori school at Bradgate and Sallywood, Countess Road, Killarney. The development comprised;

(i) Retention for: (a) Increased number of students attending, from the 15 no. places previously approved under P.A. Ref. 93/202467, ABP Ref. 63.091650. (b) Revised hours of operation of between 8.30 a.m. and 5.15 p.m.

(ii) Permission for: (a) Change of use of ‘Bradgate’ to residential. (b) Change of use of ‘Sallywood’ from residential to childcare/montessori school to accommodate 66 no. childcare places. (c) Extension to ‘Sallywood’, part two-storey (to side) and part single-storey to rear and front. (d) Reconfiguration of site frontages to provide for a combined parking and drop-off area.

Permission was refused for the following reasons;

1. The site of the proposed development is located in an area subject to the zoning objective ‘Existing Residential’ in the current Killarney Town Development Plan and where the objective is to provide for and improve residential amenities. While the zoning objective also allows for the provision of childcare facilities, it is considered that the proposed development of such a large scale facility, catering for up to 66 children each session, over two sessions per day, would seriously injure the amenities of residential property in the vicinity by reason of excessive noise disturbance, on-street parking and traffic generation. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the subject site on the heavily trafficked (both vehicular and pedestrian) Countess Road, immediately adjacent the Countess Road/Rookery Road junction, and the significant deficiency in the provision of car parking, it is considered that the proposed development would generate conflicting traffic movements and on-street parking and thereby endanger public safety by reason of traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The retention of the increased number of children within the existing facility at “Bradgate”, and the retention of the revised hours of operation of this facility, would contravene materially conditions 1 and 2 of planning permission register reference PP93/2467 (An Bord Pleanála reference number PL63.091650), and the continued use of the original “Bradgate” house as a crèche/Montessori childcare facility is inconsistent with the use authorised by that permission. Based on the documentation submitted with the application and appeal, it is considered that the development for which retention is sought endangers public safety by reason of traffic hazard due to the traffic movements and car parking in the vicinity on street and on neighbouring footpaths, that is associated with the operation of this facility in excess of the limits and extent set out in planning permission register reference PP93/2467 (An Bord Pleanála reference number PL63.091650). The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1.3. **ABP Ref. PL 63.091650 & Reg. Ref. 93/202467** – Permission was granted for an extension to “Bradgate” for use as a Montessori school. Under this permission the operational hours of the school were restricted to 0800 to 1400 Monday to Friday and the number of children at the school was restricted to a maximum of 15 at any time.

5.0 Policy Context

5.1. Kerry Development Plan 2022-2028

- 5.1.1. The Killarney Town Development Plan 2009-2015 (as extended and varied) is incorporated into the Kerry County Development Plan 2022-2028.
- 5.1.2. The site at Bradgate, Countess Road, Avenue (Townland), Killarney is located on lands zoned objective 'R2' – Existing Residential.
- 5.1.3. Chapter 6 refers to Sustainable Communities
- 5.1.4. Section 6.3.6 refers to Childcare
- 5.1.5. Objective KCDP 6-52 – It is an objective of the Council to: Facilitate the provision of childcare facilities and new and refurbished schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations.
- 5.1.6. Volume 6 of the Plan refers to Development Management Standards and Guidelines and Section 1.7.2 refers to Childcare Facilities it advises, where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses, a residential element should be retained within the proposal. Planning applications for all childcare facilities shall be assessed for compliance with the following criteria:
 - Suitability of the site for the type and size of facility proposed
 - Impact on residential amenity of surrounding residential development, noise, loss of residential amenity, traffic generation and general disturbance
 - Adequate availability of indoor and outdoor play space
 - Convenience to public transport nodes, pedestrian and cycling facilities
 - Local traffic conditions
 - Safe access and sufficient convenient off-street car parking and/or suitable drop-off and collection points for customers and staff

5.2. Natural Heritage Designations

- 5.2.1. Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site code 000365) is located 732m from the appeal site and Killarney National Park SPA (Site code 004038) is located approximately 818m to the west.

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the development comprising the change of use of a portion of ground floor of existing house, an extension of hours of operation of the existing permitted childcare facility and the creation of a one bedroom residential unit on the first floor of the existing house and in the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Third party appeals have been submitted by (1) Timothy and Abina Spillane and (2) Ann Courtney, Michael Hickey & Grace O'Neill.

(1) Timothy and Abina Spillane

- The appellants strongly object to the decision by Kerry County Council to grant permission for this commercial development in a residential area.
- They refer to a court order which prohibited the use of the "Bradgate" premises other than as permitted by the governing 1993 planning permission Ref: 93/202467 which allowed for a maximum of 15 children to attend per day during the hours of 8.00am – 2.00pm a stay was put on the order under Section 160 of the Planning & Development Act until December 12th 2019.

- The property “Bradgate” was then let to tenants who would have to vacate the dwelling if permission were granted for the current proposal.
- Under Reg. Ref. 16/647 & PL08.249011 permission was refused for the increase in the number of students, revise hours of operation, change of use of 'Bradgate' building to residential and 'Sallywood' to childcare to accommodate 66 no. places.
- Under Reg. Ref. 18/753 & ABP 303927 permission was refused to retain change of use from residential to Montessori school & associated offices, increase number of students, extend operation hours.
- It is stated that health and safety is a primary concern of the residents of Countess Road.
- The increase in the number of children attending the Montessori House of Children caused a dangerous traffic situation on a daily basis. It is stated that during the operation of the premises particularly during drop off and collection times cars parked along Countess Road and included cars blocking neighbours driveways.
- There is a zebra crossing on Countess Road. This is used by parents and children attending St. Oliver’s Primary School, Rookery Road. It is located circa 100m from the junction of Rookery Road and Countess Road. It is noted that the primary school has circa 800 students and 50 teachers with 20 special needs assistants. The school hours clash with the morning and lunchtime drop off and pick up times of the Montessori House of Children.
- The lunchtime collection time at the Montessori House of Children clashed with the collection time for the junior and senior infant students at St. Oliver’s Primary School. Therefore, it is submitted that there are inadequate and unsafe parking facilities at “Bradgate” not only for staff parking but also to accommodate the number of parents to safely drop off and pick up their children.
- Permission is also sought to convert the upper floor of “Bradgate” into an apartment. It is stated that there are no designated parking spaces allocated for this proposed apartment.

- There are no clear details provided as to the facilities available for staff toilets and a canteen area.
- The property “Sallywood” which is immediately to the east of “Bradgate” is also owned by the applicant. It is noted that the property was previously part of an earlier application for a childcare facility.

(2) Ann Courtney, Michael Hickey & Grace O’Neill

- The planning history and enforcement proceedings are detailed in the appeal.
- Kerry County Council sought and obtained an Order in the South Western Circuit Court dated July 31, 2019 which prohibited the use of the “Bradgate” premises other than as permitted by the governing 1993 planning permission Ref. 93/2467. The Court Order noted the Defendants (applicant in subject application) proposed the “relocation of the Montessori School to Killarney Pastoral Centre” and “That the 1993 planning permission does not permit the main house to be used for a Montessori School, it is residential only.
- A stay was put on the order granted under Section 160 of the Planning and Development Act until December 12, 2019 to facilitate the relocation of the Montessori School to Killarney Pastoral Centre.
- It is stated in the appeal that the Montessori School use at “Bradgate” was abandoned in fact and in law on or before August, 1st 2019.
- The cessation of both the permitted and unauthorised Montessori School use at “Bradgate” has resulted in significant relief and improvement to the residential amenity and quiet enjoyment of the appellants properties.
- It is submitted that the planning application is invalid on the basis that the site notice did not comply with the Planning and Development Regulations 2001 (as amended). It is submitted that the public notices did not properly or adequately describe the nature and extent of the proposed development.
- In relation to development plan policy, it is highlighted that the land use zoning objective referring to “Bradgate” have been modified (by variation of the Town Plan) since the most recent decision of An Bord Pleanála to refuse permission is not subject to General Zone Types classification scheme.

- A creche use is no longer ‘permitted’ within the ‘R2’ exiting residential zone but is instead ‘open to consideration’. The R2 - exiting residential zone at “Bradgate” is also now subject to the following policy: “It is the policy of the Local Authority to facilitate development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.
- It is submitted that the current application seeks to redefine and radically alter the permitted Montessori School use by replacing the entire ground floor residential use within a full day care, commercial creche/childcare use, thereby resulting in a material intensification of commercial use on site.
- Policy SC-23 of the Kerry County Development Plan sets out to “Permit childcare facilities in existing residential areas provided that they do not have a significant impact on the character or amenities of an area, particularly with regard to car parking, traffic generation and noise disturbance. Where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses, a significant residential element should be retained.
- The current proposal would replace the entire ground floor of the main house at “Bradgate” with a full day-care, commercial childcare/creche use and this would result in at least two thirds of the overall floor area of the premises being dedicated to commercial/childcare use.
- The proposal to replace the vast majority of the residential element of “Bradgate” would render the residential use to one that is ancillary and subordinate to the commercial childcare/creche use. This would be contrary to policy SC-23.
- The proposed private open space area to serve the first floor apartment to the front is considered inadequate and unacceptable. This strip of 2.4m would also be required for bin storage. There is no car parking space dedicated to the proposed first floor apartment.
- In relation to the requirement for the additional floor area, it is stated that it is not justified. It is submitted that the existing 29sq m of area provided in the

existing permitted Montessori School at “Bradgate” adequately accommodates 15 children (aged between 2 & 5) in accordance with the space requirements set out in the Childcare Act 1991 (Early Years Service) Regulation 2016 and the Tusla Quality and Regulatory Framework; 2018 for sessional Montessori use where 1.818sq m of clear space is required for each child attending for up to 3.5 hours daily.

- It is submitted that the extended hours of operation is not warranted or justified.
- The decision of Board referring to ABP Ref. PL 63.091650 & Reg. Ref. 93/202467 which restricted the number of children attending the Montessori School at “Bradgate” to 15 on morning between Monday and Friday. This restriction to 15 children to attend the premises and limiting the hours of operation between 8am – 2pm was a practical and balanced approach by the Board.
- It is noted that the applicant now operates the Montessori School in the Old School House, Rock Road, Killarney. The hours of operation are 8.00am to 5.00pm and two part time sessions are provided.
- The subject proposal which is located in a semi-detached dwelling in a primarily residential area seeks to extend the hours of operation of a commercial business to 6.30pm. It is considered that this proposal would create the potential for the applicant to provide at least two sessions per day to the detriment of the residential amenities of the surrounding area.
- In relation to the car parking, it is stated that when the Montessori school at Countess Road was operating that ad hoc, illegal parking occurred outside of the properties along the northern side of Countess Road arising from the drop-off and collection of children associated with the Montessori school.
- There is a double yellow line along Countess Road including the road frontage at “Bradgate” which means that waiting or parking is not permitted outside the Montessori school. The layout cannot accommodate a legal and safe set down/drop off area for children attending the Montessori school.

- The proposal would generate the requirement for 4 no. car parking spaces. A further 1.25 spaces are required to serve the proposed residential unit. This results in a minimum requirement for 5 spaces within the site in accordance with the Killarney Town Plan parking standards.
- The applicant has put forward a flawed assertion that as it is not proposed to increase the number of children attending the proposed childcare facility that the status quo regarding traffic movements is maintained.
- It is stated that the site is not capable of accommodating 3 car parking spaces as proposed.
- In relation to traffic and access considerations the appellants wish the Board to know their serious concerns about the practical functioning of the proposed development and its effects on traffic, congestion and pedestrian safety on this busy road opposite a priority T junction. Given the siting of the proposed Montessori full day-care, commercial childcare/creche use, it is submitted that its operation would culminate in significant increased traffic congestion, on street car parking and traffic conflicts with vulnerable road users including young children and people with impaired mobility and would consequently endanger public safety and cause a traffic hazard.
- It is considered that the assessment of Kerry County Council did not adequately address the issues. They consider that the contents of the observations to the application were not adequately summarised.
- Regarding the matter of car parking the report of the Planning Officer concluded that the standards required in Killarney Town Plan are excessive by modern day policy objectives.
- It is set out in the appeal that the proposed development would generate the requirement for 5.25 car parking spaces based on Tusla requirements for staff.
- In relation to Development Plan policy SC-23 of the Kerry Development Plan which requires that a significant residential element should be retained, the rationale put forward by the Planning Authority to justify the grant of permission without a significant residential element is questioned.

- It is highlighted that the report of the Planning Officer compared the proposal for the first floor apartment favourably against previous applications solely on the basis that there was to be no residential element remaining on site.
- The proposed internal alterations would see the proposed day-care, commercial childcare/creche use become the predominant use of the property on the application site, which would lead to a greater intensity of use of this dwelling house and its grounds than currently occurs under its permitted Montessori School use. Consequently, the residential character of this site would be lost. The retained residential element is not considered significant.
- The appellants request that the Board has full regard to the extensive planning and enforcement history on site and refuse permission.
- The appeal refers to a number of the conditions attached to the permission. In relation to condition no. 3, it is considered that the wording is ambiguous. It states “regardless of how long they stay” is not clearly understandable and is open to interpretation. It is considered that the imprecise wording would not preclude a child being replaced after they have left over the course of the day if the maximum of 15 children is not exceeded.
- Condition no. 4 requires that the “proposed one bedroom first floor level apartment shall be used for the provision of overnight accommodation without a prior grant of planning permission.” This would appear to preclude any monetary exchange between occupant/tenant and the landlord as would be expected if an employee of the Montessori House of Children were to reside at “Bradgate”.
- Condition no. 5 states, “the amenity space for the apartment shall be screened from the car parking area” and that “precise details shall be agreed with the Planning Authority prior to commencement of development.” Any proposed screening would be likely to be in excess of the 1.2m height which constitutes exempted development and could not be agreed with the Planning Authority.
- Reference is made to three decisions of the Board. Under ABP 3-3524-19 permission was refused for retention of an expanded ‘childcare facility’ because the dwellinghouse would not remain primarily residential and would

generate increased noise, pedestrian and vehicle traffic and general dis-amenity over and above that experienced as a result of the proposed intensification of childcare use in an existing residential area.

- Under ABP 301268-18 permission was refused for retention of a Montessori for 12 children because it would give rise to a substantial increase in vehicle movements, accessing the site and in the absence of dedicated drop-off space and having regard to the street layout in the area and constrained nature of parking arrangements generally that the proposed development would unreasonably add to existing congestion and would endanger public safety by reason of traffic hazard.
- Under PL06D.248137 permission was refused for change of use of part of ground floor room from residential to Montessori preschool for 22 children in one working session (9.30 am to 12.30pm) on the grounds that the site was not suitable because of failure to provide safe access, off-street car parking and drop-off collection points.
- It is submitted that having regard to those cited decisions of the Board that permission should be refused for the current proposal given the similarity of scale, traffic hazard and impact on residential amenity.
- In conclusion it is requested that the Board refuse permission for the proposed development for the reasons set out in the appeal.

6.2. Applicant Response

Responses to the third party appeals were submitted by Core Consultancy Limited on behalf of the applicant Montessori House of Children.

In response to the appeal from Ann Courtney, Michael Hickey & Grace O'Neill the first party has provided the following comments.

- It is stated that Carol Dempsey and Sean Buckley of Montessori House of Children fully acknowledge and accept the previous decisions made by An Bord Pleanála.

- It is highlighted that the previous applications contained very different proposals and that the scope of the other proposed development is considerably reduced.
- The current proposal seeks to make implementable the conditions of the 1993 decision of the Board (PL 63.091650) in relation to current Childcare Accessibility and Employment Regulations and be able to offer childcare service to parents who work past 2pm on weekdays.
- In relation to the site notice the applicant made every effort to submit a valid planning application. Previous applications which were withdrawn Reg. Ref. 20/687 and Reg. Ref. 21/55 was done to remedy the documents and an application was resubmitted which was fully compliant with the Planning and Development Regulations.
- Regarding the development description the appellants have made the argument that a Montessori School can only cater for children between the ages of 2.5 – 5 years in sessional care provision the first party disagree with this assertion.
- In the Childcare Facilities – Guidelines for Planning Authorities, 2001 there is a distinction made between childcare facilities providing “sessional” and “full day-care” services, and Montessori groups are an example of facilities providing sessional services. This does not exclude them from providing full-day care.
- The Guidelines relate solely to the land use and planning aspects of childcare provision. The legislation governing “sessional” and “full day – care” facilities is set out in the Child Care (Pre-School Services) Regulations 1996 (since revoked and replaced by the 2006 Regulations).
- It is highlighted that the Child Care (Pre School Services) Regulations refer only to ‘pre-school services’ when describing facilities providing ‘full day care’ or ‘part-time day care’ services and that the word “Montessori” does not appear anywhere in the text of these Regulations.
- The applicant references the Montessori school as a childcare facility throughout the application documents and public notices is due to “childcare

use” being the land use category under which the Planning Authority will consider the application.

- The continual use of inaccurate phrases such as “full day-care”, “commercial childcare/creche use” is used by the appellants and is inaccurate, irrelevant and misleading.
- The conditions of the 1993 decision of An Bord Pleanála regulate the hours of operation and number of children attending the applicant’s Montessori school. The conditions do not stipulate full or part-time care provision and it does not prescribe the age cohort of children attending the facility.
- The permitted hours of operation of 8am – 2pm (6 hours) are considered as ‘full day-care’ under the Childcare Facilities – Guidelines for Planning Authorities 2001 which is defined as “the provision of a structured day-care service for children for more than 3.5 hours of per day.
- Tulsa Early Years Inspectorate Quality and Regulatory Framework (2018) defines a full-day care service as “an Early Years Service offering a structured day care service for early years children for more than five hours of the day.”
- It is stated that Montessori House of Children never provided a “service” (3.5 hours) morning service in its school.
- The applicant proposes to offer full day care services to the 15 no. children permitted to attend their Montessori School in “Bradgate”.
- A main issue in the appeal is whether it is appropriate to bring the operating hours of the Montessori School in line with typical operating hours for all childcare facilities. An extension of 4 hours would make a very significant difference to the applicant and to the parents who are patrons of the Montessori School.
- It is highlighted that while it was more common to have part-time childcare facilities when the planning permission was granted in 1993. However, family living patterns and childcare requirements have significantly evolved since then and this has made flexible and full-day facilities the norm for planning permissions for such facilities granted today.

- The appeal has outlined objections to the proposed residential unit on the first floor of the existing house. Specifically, the size of the unit relative to the original house, quality of amenity space, parking provision occupants enjoyment of unit, visual impact on character of the street and devaluation of neighbouring properties.
- It is submitted that the residential component will continue to make up a 'significant residential element' at 50% of the area of the existing house on plan which is in accordance with Objective SC-23.
- The residential unit which is proposed to have one bedroom will be accessed via the original front door of the house with private open space and shared bin storage on that side to maintain separation from the childcare facility private amenity space. Details to screen the open space are to be agreed with the Planning Authority.
- In relation to the occupancy of the residential unit it will be an employee of the childcare facility who would be Garda vetted.
- Condition no. 3 of the 1993 Board decision required that the residential unit will be retained as a single unit in one ownership.
- Regarding residential amenity it is stated that in relation to occupants enjoyment of the apartment, residential disamenity or devaluation of neighbouring properties are subjective and untrue.
- It is stated that the two houses adjacent to "Bradgate" have been sold since the planning process began. The properties were sold at substantially above the market value.
- Montessori House of Children has been in operation at this location since 1993 and during the that time there have been no recorded anti-social or noise complaints associated with the Montessori school.
- Regarding the Court Order, as directed by the Court the applicant has restored the use of the house at "Bradgate". They have ceased their childcare business in the extension to "Bradgate" for practical reasons and transferred their operation to another premises. This does not equate to "decommissioning" or "abandoning" of the "Bradgate" premises.

- They are fully in compliance with the conditions of the Court Order and confirmation has been received from the Enforcement Unit in Kerry County Council that there are no current planning issues at “Bradgate”.
- Consequent of the 1993 Bord decision permission was granted for traffic movements associated with the 15 no. children attending the childcare facility adjoining the existing house.
- It is not proposed to change the number of children as part of the application. It is proposed to extend the hours of operation of the service. Whilst the quantity of traffic movements remain as originally permitted the period over which they occur is longer in turn making traffic movements safer.
- The photos submitted by the appellants are not dated or time stamped. Therefore, it is unclear in what context they should be viewed.
- The Road Safety Collision Database was examined to identify collisions that may have been recorded on Countess Road near “Bradgate”. Between 2005 and 2016 one recorded minor collisions was recorded at the Rookery Road/Countess Road junction. The collision occurred in 2005 and involved two vehicles which appear to be unrelated to the Montessori.
- Regarding parking, the occupant of the residential unit/apartment will be an employee of the childcare facility. It is a policy of the Montessori House of Children that staff cannot park within the Montessori site. Staff will be encouraged and required to use alternative modes of transport, car pooling or find alternative parking arrangements where required.
- The applicant states that they have provided evidence of need and letters of support have been provided from various professional organisations in Killarney.
- It is stated in the third party appeal that the appeal reflects the wider concerns of residents on Countess Road. The applicant has included letters of support from other residents of Countess Road.
- In conclusion, the appellants have made their case against the application based on confusion about the term ‘Montessori’, criticism of validity of the planning application, criticism of the Planning Authority’s review process,

misinterpretation of the outcome of the court case and inaccuracy about the applicant's business model and predicting future behaviour.

- It is stated that Montessori House of Children has operated on Countess Road since 1993 and there has never been any incident in relation to the childcare facility in those years.

In response to the appeal from Timothy and Abina Spillane the first party has provided the following comments.

- It is stated that Carol Dempsey and Sean Buckley of Montessori House of Children fully acknowledge and accept previous decisions made by An Bord Pleanála. The previous applications contained very different proposals and the scope of the current proposal is considerably reduced.
- The appeal refers to a Court Order against the applicant brought by Kerry County Council in July 2019. It is highlighted that the appellant were not party to this case.
- The owners of Montessori House of Children swore an oath and gave an understanding, which they have not breached.
- The Court Order states;

THE COURT NOTES THE FOLLOWING UNDERTAKING MADE IN COURT BY CAROL DEMPSEY AND SEAN BUCKLEY ON THEIR OWN PERSONAL BEHALF AND ON BEHALF OF THE DEFENDANT COMPANY MONTESSORI HOUSE OF CHILDREN LIMITED. "not to use the Bradgate premises between now and the 12.12.19 other than as permitted by the 1993 planning permission unless absolutely necessary due to circumstances outside their control arising from the proposed relocation of the Montessori School to Killarney Pastoral Centre. AND THE COURT NOTES "that the 1993 planning permission does not permit the main house to be used for a Montessori School, it is residential use only."

- They have restored the use of the house at Bradgate as directed by the court. The operation of the childcare business in the extension to Bradgate for practical reasons has been transferred to another premises.

- It is stated that this does not equate to ‘decommissioning’ or ‘abandoning’ of the Bradgate premises.
- They are fully in compliance with the conditions of the Court Order and confirmation has been received from the Enforcement Unit of Kerry County Council that there are no current planning issues at Bradgate.
- Consequent of the 1993 Bord decision there is permission for traffic movements associated with the 15 no children attending the childcare facility adjoining the existing house.
- It is not proposed to change the number of children as part of the application but to extend the hours of operation of the service which would provide more flexibility.
- The photos submitted with the appeal are not dated or time stamped. It has been established that prior to the Court Order in 2019 the number of children attending the facility was in excess of that granted under the 1993 permission and it is assumed that the photos which were included reflect this.
- In relation to car parking the occupant of the residential unit/apartment will be an employee of the childcare facility as was case with the original permission. It is a policy of Montessori House of Children that staff cannot park within the Montessori site.

6.3. Planning Authority Response

- The Planning Authority does not have any further comment to make on the third party appeal other than to state that the enforcement file that was open on the property had been closed and all matters have been resolved prior to submission of this application.

6.4. Further Responses

A further submission from the appellants Timothy and Abina Spillane was received by the Board on the 13th of January 2022. The issues raised are as follows;

- They endorse the contents of the appeal made by Reid Associates on behalf of Ann Courtney, Michael Hickey & Grace O’Neill.

- The photographs included with the appeal show customers/parents attending the Montessori House of Children parking in the vicinity on Countess Road including across the access to the zebra crossing.
- The zebra crossing is located a few metres from the entrance of the Montessori House of Children. It is used daily by parents and children attending St. Oliver's Primary School. The obstruction of the zebra crossing is a pedestrian and traffic hazard.

A further submission from the appellants Ann Courtney, Michael Hickey & Grace O'Neill was received by the Board on the 26th of January 2022.

- They support the grounds of the appeal lodged by Timothy and Abina Spillane on December 24th of December 2021 and fully endorses the planning reasons and arguments set out in their appeal lodged with An Bord Pleanála on January 6th 2022.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Policy context and planning history
- Residential amenity
- Traffic and Access
- Other issues
- Appropriate Assessment

7.1. **Policy context and planning history**

- 7.1.1. Under Reg. Ref. 93/202467 & PL63.091650 permission was granted for an extension to "Bradgate" a two-storey semi-detached dwelling for use as a Montessori school. Under this permission the operational hours of the school were restricted to

0800 to 1400 Monday to Friday and the number of children at the school was restricted to a maximum of 15 at any time.

- 7.1.2. Under Reg. Ref. 16/647 & PL08.249011 permission was sought to increase the number of children and to revise the hours of operation and change the use of 'Bradgate' to residential and change the use of 'Sallywood' from residential to childcare/Montessori school to accommodate 66 no. childcare places. The Board refused permission on the basis that having regard to the scale of the development that it would seriously injure the amenities of residential property in the vicinity by reason of excessive noise disturbance, on-street parking and traffic generation. Permission was also refused on the basis that there was significant deficiency in the provision of car parking, and that the proposed development would generate conflicting traffic movements and on-street parking and thereby endanger public safety by reason of traffic hazard and obstruction of road users. The third reason for refusal referred the original permission An Bord Pleanála reference number PL63.091650 and stated that it would contravene materially conditions 1 and 2 of that permission.
- 7.1.3. Under ABP 303927-19 & Reg. Ref. 18/753 permission was refused by the Board to retain change of use from of house, "Bradgate", to Montessori school, retention of the increase in the number of students from 15 to 35, retention of the extension of the hours of operation from 8am-2pm to 8am-6pm, and permission to set back the front wall of the property and adjoining residential property of "Sallywood" to facilitate a set down area. Permission was refused on the basis that the having regard to the significantly increased scale and intensification of the facility over that which was permitted under planning permission register reference number PP93/2467 (An Bord Pleanála reference number PL63.091650), and to the removal of all the residential use within "Bradgate", it is considered that the development for which retention is sought seriously injures the amenities of residential property in the vicinity, particularly by reason of incompatible on-street parking and traffic, and directly conflicts with the Development Plan objective by the removal of the residential use in the building.
- 7.1.4. The second reason for refusal refers to the significant deficiency in the provision of on-site car parking, it is considered that, notwithstanding the provision of parking bays / set-down area across the frontage of "Bradgate" and "Sallywood", the

development for which retention is sought, together with the proposed parking bays / set-down area, would generate conflicting traffic movements and on-street parking and would, thereby, endanger public safety by reason of traffic hazard and obstruction of road users, including vulnerable pedestrian users of the adjacent footpaths.

- 7.1.5. As detailed in the third party appeals and in the response from the first party there is an enforcement history in respect of the operation of the childcare facility at “Bradgate”. I note that the first party confirm that in relation to the Court Order, as directed by the Court they have restored the use of the house at “Bradgate”. They further stated that they have ceased their childcare business in the extension to “Bradgate” for practical reasons and transferred their operation to another premises.
- 7.1.6. The first party confirmed that they are fully in compliance with the conditions of the Court Order and confirmation has been received from the Enforcement Unit in Kerry County Council that there are no current planning issues at “Bradgate”. In respect of this matter, I would note that the Planning Authority in their assessment of the subject application did not raise the matter of the previous enforcement. Furthermore, I note the response from the Planning Authority in respect of the appeal in which they confirmed that the enforcement file that was open on the property had been closed and all matters have been resolved prior to submission of the application.
- 7.1.7. In relation to subject application the Planning Authority sought further information in order to ascertain if the proposal would intensify the service provision and the number of children to attend the Montessori.
- 7.1.8. In response to the matter the applicant confirmed that it is not proposed to change the number of children as part of the application but to extend the hours of operation of the service which would provide more flexibility. The proposal also entails the change of use of the main portion of ground floor of existing house “Bradgate” to Montessori school childcare use.
- 7.1.9. The grounds of appeal have raised concerns in relation to the principle of the proposed change of use of an area of “Bradgate” to Montessori school childcare use and also the proposed first floor apartment in terms of reduction in residential area

and intensification. The area of the ground floor where a change of use is proposed is 58.1sq m.

- 7.1.10. Objective SC-23 of the Kerry County Development Plan 2015-2021 is referred to in the appeals. Objective SC-23 stated that it was an objective to permit childcare facilities in existing residential areas provided that they do not have a significant impact on the character or amenities of an area, particularly with regard to car parking, traffic generation and noise disturbance. Where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses, a significant residential element should be retained. This objective was cited in the previous refusal of permission under ABP 303927-19 & Reg. Ref. 18/753 where it was considered that due to the significantly increased scale and intensification of the facility that it would seriously injure the amenities of the residential property in the area.
- 7.1.11. I would note that the current proposal differs from those previous applications on the basis that it is not proposed to increase the number of children above the 15 no. which was permitted under the original permission.
- 7.1.12. In relation to the current plan Kerry Development Plan 2022 – 2028, the appeal site at Bradgate, Countess Road, Avenue (Townland), Killarney is located on lands zoned objective 'R2' – Existing Residential. Under this zoning it is the objective to provide for residential development and protect and improve residential amenity. The description of the 'R2' zoning as set out in the Development Plan states that it refers to existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development. It is further stated it may also include a range of other ancillary uses for residential, particularly those that have the potential to foster the development of residential communities. These are uses that benefit from a close relationship to the immediate community, such as crèches, some schools and nursing homes. A limited range of other uses that support the overall residential function of the area may also be considered. Accordingly, the subject proposal to change the use of the ground floor of the dwelling to a childcare facility is in line with this and as such is open for consideration.

7.1.13. Chapter 6 of the Plan refers to Sustainable Communities and Section 6.3.6 refers to Childcare. Objective KCDP 6-52 refers to childcare and states that it is an objective of the Council to: Facilitate the provision of childcare facilities and new and refurbished schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations.

7.1.14. Volume 6 of the Plan refers to Development Management Standards and Guidelines and Section 1.7.2 refers to Childcare Facilities it advises, where proposed facilities relate to properties which have been designed and built as dwellings and are surrounded by other houses, a residential element should be retained within the proposal. Planning applications for all childcare facilities shall be assessed for compliance with the following criteria:

- Suitability of the site for the type and size of facility proposed
- Impact on residential amenity of surrounding residential development, noise, loss of residential amenity, traffic generation and general disturbance
- Adequate availability of indoor and outdoor play space
- Convenience to public transport nodes, pedestrian and cycling facilities
- Local traffic conditions
- Safe access and sufficient convenient off-street car parking and/or suitable drop-off and collection points for customers and staff

7.1.15. In relation to these matters, I note that regarding the suitability of the site for the type and size of facility that there is existing permission for use as a Montessori within the extension to “Bradgate”. The applicant does not propose to increase the number of children beyond the 15 no. which are limited under that existing permission. The proposed changes involve a change of use of 58.1sq m of the existing ground floor of the dwelling to childcare use to provide a sleep room, staff area and childcare room. In relation to availability of indoor and outdoor play space the proposal will increase the area available for both indoor play and also outdoor play with the rear garden of the property provided to serve the childcare facility. It is detailed in the letter submitted with the application that the extension which received permission in 1993 to provide the Montessori is no longer fit for purpose in relation to providing childcare service to 15 no. children. It was highlighted that there is inadequate area

to cater for children of different ages and there is no sleep room for children under the age of 12, no nappy changing room, no wheelchair accessible toilet and no distinct area for staff. The case is made that since the permission was granted the legislation has been enacted to regulate the childcare sector setting out minimum space requirements and facilities necessary to ensure the welfare of children, staff and visitors. The submission with the application stated that the Quality and Regulatory Framework requires service providers to have one nappy changing room per 11 children in nappies. The National Standards for Pre-School Services identify the need for a room or area separate from the areas used by children and separate from the kitchens/food storage area that is available for staff to take breaks, hold staff meetings or meet with parents. Therefore, it is put forward by the applicant that the existing facility does not have adequate space to provide these facilities.

- 7.1.16. Accordingly, the extended area is proposed in order to comply with various regulatory requirements. The first party state that the extended hours of operation from 8.00am – 2.00pm to 8.00am – 6.30pm is required in order to provide a more flexible and full-day service which is now required by parents and families. The first party note that the situation in relation to society, working patterns and childcare have changed significantly in the past thirty years since the original permission for the Montessori was granted.
- 7.1.17. The Planning Authority in their assessment of the proposal concluded that the lengthening of the day session available to parents of the 15 children attending on any day will not have a negative impact upon the amenities of the adjoining residents or the immediate area. Having regard to the existing permission, I would concur with the Planning Authority that it would be acceptable to extend the hours of operation on the basis that additional flexibility of service is now required. Furthermore, given that it is not proposed to increase the number of children beyond 15, I am satisfied that it would not result in an intensification of use.
- 7.1.18. Regarding the proposed first floor apartment the grounds of appeal raised concerns in relation to the loss of residential floor space and also the limited occupancy proposed. The submitted drawings indicated that it is proposed to convert two of the existing first floor bedrooms into a living room and kitchenette to provide a one bedroom apartment with independent access from the front of the property at ground floor. The first party in their response stated that the grounds of appeal have outlined

objections to the proposed residential unit on the first floor of the existing house, specifically, the size of the unit relative to the original house. They submitted that the residential component would continue to make up a 'significant residential element' at 50% of the area of the existing house on plan which is in accordance with Objective SC-23. Regarding the matter of the area of residential use to be maintained within the property, I would concur with the case made by the first party that the continued use of the first floor for residential purposes which represents 50% of the area of the existing dwelling will ensure a satisfactory residential component is maintained within the property.

- 7.1.19. In relation to the proposed occupancy of the residential unit the applicant detailed in a letter submitted with the application that the childcare facility and the residential unit will be retained as a single unit in one ownership. They propose that the occupant of the residential unit will be an employee of the childcare facility. The first party in their response to these issues raised in the appeal highlighted that the employee of the childcare facility who would occupy the residential unit would be Garda vetted.
- 7.1.20. The Planning Authority were satisfied with this proposal and attached a condition to the permission specifying that the proposed occupancy be provided. While I note the point raised in the appeal that such a condition would limit the potential occupancy of the apartment, I would consider that it is a highly suitable arrangement. Firstly, it ensures the proposal is in line with the requirement of the original permission that the childcare facility and the residential unit be retained as a single unit in one ownership and secondly, having regard to the current situation with the significant lack of available rental accommodation. Accordingly, should the Board decide to grant permission I would recommend the attachment of a similarly worded condition.
- 7.1.21. The grounds of appeal raise the matter of the nature of the childcare being proposed. The first party have addressed this issue. The case was made in the appeal that a Montessori School can only cater for children between the ages of 2.5 – 5 years in sessional care provision. The first party disagree with this assertion. They submit that as set out in the Childcare Facilities – Guidelines for Planning Authorities, 2001 in the definitions there is a distinction made between childcare facilities providing “sessional” and “full day-care” services, and Montessori groups

are an example of facilities providing sessional services. However, they stated that this does not exclude them from providing full-day care.

7.1.22. The first party stated that the Guidelines relate solely to the land use and planning aspects of childcare provision and that the legislation governing “sessional” and “full day – care” facilities is set out in the Child Care (Pre-School Services) Regulations 1996 (since revoked and replaced by the 2006 Regulations. They highlighted that the Child Care (Pre School Services) Regulations refer only to ‘pre-school services’ when describing facilities providing ‘full day care’ or ‘part-time day care’ services and that the word “Montessori” does not appear anywhere in the text of these Regulations. In relation to the permission granted by the Bord under ABP Ref. PL 63.091650 & Reg. Ref. 93/202467 for the extension to “Bradgate” for use as a Montessori school the first party highlight that the conditions do not stipulate full or part-time care provision and it does not prescribe the age cohort of children attending the facility. Accordingly, I am satisfied that the proposal to provide full day care can be considered acceptable in the context of the planning history and existing permitted use on site as a Montessori.

7.1.23. In conclusion, I am satisfied that the proposed development will allow for the expansion and improvement of the existing childcare facility without a material intensification of its occupancy. I am satisfied that this is a long established use at this location and that the principle of the development. I shall examine the matters of traffic and parking and residential amenity in the subsequent sections of the report.

7.2. Traffic and Access

7.2.1. The grounds of appeal raised the matters of traffic generation, parking and drop off and traffic safety. Both third party appeals refer to the car parking generated by the operation of the childcare facility along Countess Road and that it resulted in vehicular entrances on occasions being blocked and concern was also raised at parking at the zebra crossing located circa 20m to the east of the site.

7.2.2. In response to these matters the first party stated that as per the permission granted under ABP Ref. PL 63.091650 & Reg. Ref. 93/202467 for the extension to “Bradgate” for use as a Montessori that it therefore permitted the traffic movements associated with the 15 no. children attending the childcare facility. The proposal does

not involve any increase in the number of children to attend the childcare facility. Although it is proposed to extend the hours of operation of the service. The first party therefore put forward that the quantity of traffic movements generated will remain the same as originally permitted, however the period over which they occur is longer in turn making traffic movements safer. Regarding this matter the Planning Authority in their assessment of the proposal considered that the extended opening hours will allow for a less concentrated drop off and pick up times which will help to avoid traffic congestion. I fully concur with points made by the first party and the Planning Authority in relation to the matter of traffic generation.

- 7.2.3. Regarding the matter of traffic safety, the first party response stated that they examined the Road Safety Collision Database to identify collisions that may have been recorded on Countess Road near “Bradgate”. They found that between 2005 and 2016 one recorded minor collisions was recorded at the Rookery Road/Countess Road junction and that the collision occurred in 2005 and involved two vehicles which appear to be unrelated to the Montessori.
- 7.2.4. In relation to car parking for Childcare Facilities as set out in Table 4 in volume six of the Kerry Development 2022-2028 which refers to Parking requirements - 1 car parking space per 4 children is required in Area 3 and 1 car parking space is required per staff member.
- 7.2.5. Regarding the issue of car parking, it was concluded in the report of the Planning Officer that the requirement as per the Killarney Town Plan of 4.5 spaces including the requirement for car parking for each staff member is excessive by modern day standards. Three spaces can be accommodated to the front of the site and there has been a Montessori school at the location since 1993 therefore it was concluded that the provision of three spaces in the location within walking distance of Killarney town centre would be acceptable.
- 7.2.6. The appellants stated that it was their opinion that this was not a satisfactory consideration on the matter. The first party in their response to the appeals have confirmed that in relation to parking that the occupant of the residential unit/apartment will be an employee of the childcare facility. They confirmed that it is a policy of the Montessori House of Children that staff cannot park within the Montessori site and that staff will be encouraged and required to use alternative

modes of transport, car pool or find alternative parking arrangements where required. Therefore, with the absence of the need for car parking to serve the staff of the Montessori including the occupant of the first floor apartment it means that there would be three car parking spaces available to the front of the property for parents/visitors to the Montessori. I also note the relative proximity of the appeal site to the town centre of Killarney as it is located circa 1km away. Therefore, it is feasible that both staff and parents could travel to the premises on foot or by bicycle. I also note that three bicycle parking spaces are proposed to the front of the Montessori. Having regard to the fact that it is not proposed to increase the number of children to attend the Montessori beyond 15 as per the original permission, I would concur with assessment of the Planning Authority on the matter.

- 7.2.7. In conclusion, as occupancy of the facility is controlled by condition, I am satisfied that the development will not generate any additional traffic movements. Accordingly, I am satisfied, therefore, that the proposed development would not exacerbate existing parking and congestion.

7.3. Residential Amenity

- 7.3.1. The grounds of appeal raised issues in relation to residential amenity in respect of the proposed first floor apartment. The matters included quality of amenity space, parking provision occupants enjoyment of unit, and devaluation of neighbouring properties.
- 7.3.2. The residential unit is proposed to have one bedroom, a living/dining room, kitchenette, bathroom and en-suite bathroom. It will be accessed via the original front door of the house with private open space and shared bin storage on that side to maintain separation from the childcare facility private amenity space. In relation to the provision of amenity space, as indicated on the Ground Floor Plan a linear area of private open space of 14sq m is proposed to the front of the property. The applicant proposes to separate the open space from the proposed parking area with a screen fence. I am satisfied that details of the proposed screening are to be agreed with the Planning Authority and this matter can be dealt with by condition. I am satisfied that the design and layout of the proposed first floor apartment including the private open space will afford the future residential a high quality of residential amenity. In relation to the issue of parking, I am satisfied with the case made by the

first party that the occupant being a staff member will not require a car parking space.

- 7.3.3. In relation to the issue of potential devaluation of surrounding property as a result of the proposed development, I note the response from the first party. They stated that the matter of devaluation of neighbouring properties is subjective and that two houses adjacent to the appeal site “Bradgate” have been sold since the planning process began and they sold at substantially above the market value. The appellants did not provide any such evidence of devaluation. Accordingly, there is no evidence available to form the basis for a refusal on devaluation of property.

7.4. Other issues

- 7.4.1. The ground of appeal raised the matter of the validity of the planning application. It was submitted that the planning application is invalid on the basis that the site notice did not comply with the Planning and Development Regulations 2001 (as amended). It is submitted that the public notices did not properly or adequately describe the nature and extent of the proposed development.
- 7.4.2. In response to this the first party stated that in relation to the site notice the applicant made every effort to submit a valid planning application. Previous applications which were withdrawn Reg. Ref. 20/687 and Reg. Ref. 21/55 were done to remedy the documents and an application was resubmitted which was fully compliant with the Planning and Development Regulations.
- 7.4.3. Furthermore, the Planning Authority considered the application to be valid. Accordingly, I am satisfied that the development description is accurate.

7.5. Appropriate Assessment

- 7.5.1. The site is located within 732m of the European site, Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and 818m of the European site, Killarney National Park SPA (Site code 004038). There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1. I recommend that the Board grant permission for the proposed development subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the policies and objectives as set out in the Kerry County Development Plan 2022-2028 and the Killarney Town Development Plan 2009-2015 (as varied and extended), it is considered, that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area and would be acceptable in terms of traffic and pedestrian 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 on the 10th day of November 2021, 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 number of children to be accommodated within the Montessori school shall not exceed 15 number places. A maximum of 15 number children shall attend the facility regardless of how long they remain in the facility.

Reason: To limit the development in the interest of residential amenity.

3. The Montessori school shall not operate outside the period of 0800 to 1830 hours Monday to Friday inclusive, and shall not operate on Saturdays, Sundays or public holidays.

Reason: In the interest of residential amenity.

4. The one bedroom apartment at first floor level shall only be occupied by an employee of the Montessori House of Children childcare facility as stated in their letter submitted to the Planning Authority on the 10th day of November 2021.

Reason: In the interest of residential amenity.

5. The amenity space for the apartment shall be screened from the car parking area. Details of the screening shall be agreed with the Planning Authority prior to the commencement of development.

Reason: In the interest of residential amenity.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no further advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area, and to allow the planning authority to assess any such further signage or advertisements through the statutory planning process.

7. A plan containing details for the management of waste/recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste/recyclable materials and for the ongoing operation of these facilities 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/recyclable materials in the interest of protecting the environment.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Siobhan Carroll
Planning Inspector

24th August 2023