



An
Bord
Pleanála

Inspector's Report ABP 313713-22.

Development	Construct a multi-residential complex consisting of twelve (12 no.) apartments and six (6 no.) dwelling houses served by the mains foul and surface water drainage systems together with all associated site works.
Location	Fossa, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21615
Applicant	O'Siocuan Holdings Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellants	Michael Cunningham and others
Observers	
Date of Site Inspection	4 th of May 2023
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is within the village of Fossa. Fossa is located approximately 7km to the west of the centre of Killarney. Fossa village is a linear settlement predominantly located along the northern side of the National Secondary Road the N72. Part of the Ring of Kerry route runs along the N72.
- 1.2. Fossa is situated on the north shore of Lough Leane which lies within Killarney National Park. Killarney National Park with its lakes and mountains is highly scenic and historic landscape which is a popular tourist destination.
- 1.3. Fossa National School and the Prince of Peace Church are located within the centre of the village. The immediate surrounding area is characterised by a range of tourist accommodation including a five star hotel resorts, hotels, guesthouses and a caravan and camping park.
- 1.4. The site has a stated area of 0.442 hectares. It has frontage of circa 25m onto the N72 and it extends back 105m. The northern boundary of the site adjoins a woodland. The eastern boundary of the site adjoins the gardens of two large, detached dwellings. The property located immediately to the south and west of the site is a large two-storey property with accommodation in the attic space.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a multi-residential complex consisting of twelve (12 no.) apartments and six (6 no.) dwelling houses served by the mains foul and surface water drainage systems together with all associated site works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 29 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was requested in relation to the following;

1. Submit an Appropriate Assessment Screening report in order to screen the proposed development including any discharges to receiving waters from the development for possible significant affects on a European Site.
2. The TII considers that the proposed development would be at variance with national policy in relation to control of frontage development on national roads. A Stage 1 and 2 Road Safety Audit (RSA) should be carried out in accordance with TII publications. Any recommendations arising shall be incorporated in the proposed development by amendment to the existing planning application.
3. The access road leading to the proposed development from the public road to be included in the red line boundary of the site as this access road will need to be upgraded in accordance with Site Development Works for Housing Areas and comply with requirements of the County Development Plan and to take into account any recommendations of the safety audit.
4. There is an overlap between the site and the site of the existing building on site. That building may need to be retained within revised site boundaries. Any changes to the building from that which was granted planning permission would be needed to be identified in that application.
5. The Planning Authority have concerns regarding the proximity of the proposed development to the boundaries of the site. The apartment building is four storeys in height, while the dwellings on adjoining sites are generally two storeys in height. A greater setback from boundaries is required. The top floors should be setback to help integrate the development into the surrounding area. It is considered that the proposed development will have a considerable impact on the house to the east. The applicant should consider these concerns and propose measures to help ameliorate these concerns. The proximity of the apartment block to the rear boundary with much higher ground to the north will have an impact upon the amount of daylight available to the rear bedrooms of the apartments. Submit proposals to address this.
6. The Planning Authority had concerns at the proximity of the proposed development to the area of woodland to the rear may have a negative impact

on the viability of the existing mature trees along that boundary. Submit report from suitably qualified person to assess the impact of the proposed development on the trees.

7. Submit a photomontage of the proposed development and adjacent properties from various viewpoints along the N72.
8. The proposed dwelling houses are not sufficiently served with private amenity space. A minimum of 75sq m of private amenity space should be allocated to each dwelling house.
9. Submit proposals to comply with the provisions of Part V of the Planning and Development Act, as amended.
10. Submit boundary treatment details for the proposed development.
11. Submit public lighting scheme for the proposed development.
12. Clarify if the area to the south of the proposed development is to be the open space area for the proposed estate.
13. Submit a comprehensive landscaping scheme prepared by a suitably qualified person for the proposed development.
14. The design of the scheme should comply with the Recommendations for Site Development Works for Housing Areas and to allow for the turning movements of cars, deliveries and refuse vehicles.
15. Details to be submitted as to how it is proposed to care for Universal Design across the development.
16. Review the storm water drainage design for the proposed development must take into consideration the additional flow of surface water from the considerably higher ground located to the north of the site.
17. Demonstrate that the existing pipework located on the public road has the capacity to accommodate this additional attenuated water.
18. Provide additional Storm Water design details which will include return period 1 in 100 year, design calculations for attenuation area to allow for an additional 20% to all storm system design for climate change. Details of any existing streams/drains with the site to be submitted with storm water

drainage design. Limit to a maximum discharge of 4 litres per second from the entire development into the public network.

Planning Report dated 11/5/2022 – Following the submission of a response to the further information requested the Planning Authority were satisfied that all issues were addressed. The overall footprints and areas of both the proposed apartment building and houses have been reduced. The number of apartments and houses have not been reduced. The number of car parking spaces has been reduced to 18 with 2 per dwelling. A new entrance to the development has been provided which is separate from that which serves the existing building on the site.

3.2.2. Other Technical Reports

Killarney Municipal District Engineer – No objection subject to conditions.

Biodiversity Officer – Further Information required.

Biodiversity Officer – Report dated 10/5/2011: AA screening report concluded that likely significant effects are excluded. No objection.

County Archaeologist – No mitigation required.

Housing Estates Unit – Comments on the layout provided.

3.3. Prescribed Bodies

Irish Water – No objection.

TII – The Authority considers that the proposed development would be at variance with national policy in relation to control of frontage development on national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012). It is recommended that a Road Safety Audit (RSA) should be carried out in accordance with TII publications. The developer shall be responsible for the cost of the audit which should be undertaken by an Independent qualified engineer. Any recommendations arising shall be incorporated in the proposed development by amendment to the existing planning application or as conditions on the permission granted. Any additional works required as a result of the RSA should be funded by the developer.

3.4. **Third Party Observations**

- 3.4.1. The Planning Authority received a number of submissions/objections in relation to the planning application. The main issues raised are similar to those set out in the appeal.

4.0 **Planning History**

Reg. 06/4870 – permission was granted for the development of 15 no. houses, ancillary site services including car parking facilities with access through the existing vehicular and pedestrian entrance, modify the existing access road servicing the existing development, connection to public foul sewer, service roads, paths and all other associated site works.

Reg. 03/1324 – permission was granted to (1) renovate and extend existing holiday apartments, change of use from apartments to hotel consisting of 53 no. bedrooms, reception/foyer, restaurant, function room, residents lounge, public bar, staff facilities and all associated ancillary services (2) Relocate existing ESB Substation, construct service yard, waste storage area, basement and ground level car park consisting of 110 car spaces, all with associated ancillary services and site works.

5.0 **Policy Context**

5.1. **Project Ireland 2040 - National Planning Framework**

- 5.1.1. The NPF includes a Chapter, No. 6 entitled 'People, Homes and Communities'. It sets out that place is intrinsic to achieving good quality of life. National Policy Objective 33 seeks to "prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location".
- 5.1.2. National Policy Objective 35 seeks "to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights".

5.1.3. National Planning Objective 13 also provides that “In urban areas, planning and related standards, including in particular height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected”.

5.2. Section 28 Ministerial Guidelines

5.2.1. The following is a list of section 28 Ministerial Guidelines considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- ‘Urban Development and Building Heights’ Guidelines for Planning Authorities (2018)
- ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’) (2009)
- ‘Design Manual for Urban Roads and Streets’ (DMURS) (2019)
- ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’) (2009)
- ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities. (2023)

5.3. Kerry County Development Plan 2022 – 2028

5.3.1. Chapter 3 of the Kerry Development Plan refers to Core & Settlement Strategy

5.3.2. Section 3.10.1 – Principles of the Settlement Strategy

5.3.3. The main principles of the Settlement Strategy are to:

5.3.4. Ensure the sustainable development of the Key towns of Tralee & Killarney to fulfil the roles identified in the Regional Spatial and Economic Strategy.

5.3.5. Ensure the sustainable development of a network of towns and villages in the county to act as service and employment centres for the surrounding hinterland.

- 5.3.6. Facilitate the provision of housing and services having regard to settlement type.
- 5.3.7. Facilitate the sustainable future development of infrastructure to serve identified settlements.
- 5.3.8. Volume Six of the Plan includes (1) Development Management Standards & Guidelines.
- 5.3.9. Section 1.5 refers to Residential Development.

5.4. Killarney Municipal District LAP 2018-2024

- 5.4.1. Section 3.9 – Fossa
- 5.4.2. Objective No: FA-GO-01 – It is an objective of the Council to; Ensure that new development shall contribute towards a compact settlement structure through making effective use of infill, brownfield and backland sites and preventing unnecessary ribbon development or development along the lakeshore.
- 5.4.3. Objective No: FA-GO-06 – It is an objective of the Council to; Preserve views and prospects.

5.5. Natural Heritage Designations

- 5.5.1. Killarney National Park SPA (Site Code 004038) is located approximately 456m to south of the appeal site.
- 5.5.2. Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365) is located approximately 473m to south of the appeal site.

5.6. Environmental Impact Assessment

- 5.6.1. The proposed development comprises 18 residential units on a 0.442 hectare site. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.

- 5.6.2. The number of dwelling units proposed at 18 is well below the threshold of 500 dwelling units noted above. The site is located within the village of Fossa which it is not in a business district. The site is, therefore, materially below the applicable threshold of 10 hectares.
- 5.6.3. The proposal for 18 residential units is located within the development boundary of Fossa on lands zoned Objective 'M2' – Village Centre in the Killarney Municipal District Local Area Plan 2018-2024. The site comprises an infill and greenfield site which is part of an existing large garden of an existing property. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage. The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The foul water from the site will enter the existing sewer system which is connected to the Killarney WWTP which has sufficient capacity to accommodate the development. The site is not within a European site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive. The application is accompanied by an Planning and Design Statement and Universal Design Compliance report submitted with the appeal. These address the issues arising in terms of the sensitivities in the area.
- 5.6.4. Having regard to
- the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
 - the location of the site on lands within the development boundary of Fossa on lands zoned under the provisions of the Killarney Municipal District Local Area Plan 2018-2024 and the results of the strategic environmental assessment of the Killarney Municipal District Local Area Plan 2018-2024 Plan, undertaken in accordance with the SEA Directive (2001/42/EC).
 - the location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the area.

- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report was not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been submitted by Brock McClure Planning and Development Consultants on behalf of the appellants (1) Michael Cunningham (2) Helen & William Costello (3) Maureen & Vicent Murphy (4) Shane Kerisk (5) Paul Kiely. The issues raised are as follows;

- It is submitted that the proposed development is not in the interest of the proper planning and sustainable development of the area.
- It is considered that the development represents a material contravention of the zoning objective. The site is zone ‘M2’ Village Centre. It is a policy within the Killarney Municipal District Plan 2018-2024 to primarily provide for mixed uses and any other appropriate to the town centre in areas zoned mixed use proposed development should improve the vitality and viability of the town centre and shall meet the needs of the town. It is stated that within the Plan that residential development will be encouraged particularly within mixed use development and indeed a mix of harmonious uses is often considered desirable and attractive characteristic.

- The proposal represents a mono use scheme which does not offer any benefit to the village centre in terms of new amenities or services. It is critically important that rural villages are protected and supported to remain viable. There are a limited number of sites in the locality that could deliver new uses appropriate to the zoning. It is considered that it represents a missed opportunity for the village of Fossa.
- Any development proposals on the site is required to deliver tangible mixed use development of an appropriate scale which offers new facilities/amenities to the village in addition to residential development.
- It is considered that the quantum and scale of residential development proposed on a site zoned mixed uses would materially contravene the zoning objective of the Killarney Municipal District Plan 2018-2024.
- The site area is 0.442 hectares and 18 no. units are proposed. The density is 40.72 dwellings per hectare. It is submitted this density is inappropriate from a qualitative and quantitative perspective. The scheme with a density of 40 units/hectare contravenes the objectives of the Kerry County Development Plan 2015-2021 and the Killarney Municipal District LAP 2018-2024 particularly as Fossa has not been identified as a growth settlement under the core strategy, consequently lands have not been zoned for proposed residential use.
- The Kerry County Development Plan 2015-2021 sets out Co. Kerry is a rural county and it is felt that imposing high densities more appropriate to larger cities is not in keeping with the urban area. Therefore, a general standard of 10-12 dwellings per hectare is usually acceptable.
- The density proposed is inconsistent with the statutory context and is inconsistent with the existing density of the surrounding area.
- Circular Letter NRUP 02/2021 issued by the Department of Housing, Local Government and Heritage on 21 April 2021 is highlighted. In relation to 'Development within small Towns and Villages' the Circular states: Small town and villages are defined within Section 6.0 of the Sustainable Residential Development Guidelines as those with a population ranging from 400 to 5,000

persons. Section 6.11 of the Guidance provides a more clearly graduated approach to the application of densities within such locations namely: -

- Centrally located sites: 30-40 + dwellings per hectare;
 - Edge of centre sites 20-35 dwellings per hectare;
 - Edge of small town/village: 15-20 dwellings per hectare.
- The guidance cautions against large scale, rapid development that may overwhelm and detract from the quintessential character of towns and villages that have developed slowly and organically over time.
 - It is submitted that the Circular clearly directs Planning Authorities to make a considered assessment of density having regard to the size and scale of the receiving environment. The site is within the small settlement of Fossa which has not been identified in the Development Plan as being appropriate for residential expansion.
 - The proposed 4 storey apartment building to the north of the site with sloping land above to 7m is not an appropriate height having regard to the surrounding context of the area which consists mainly of two-storey dwellings.
 - The height is of concern in relation to privacy and amenity of adjacent properties. The design, layout, scale, mass and height of the development did not have regard to the modest height and character of the adjoining residential properties and will have a long-term and profound negative impact on their residential amenity and character of the area.
 - The development will break the building line and create a highly incongruous feature within the streetscape. It would set an undesirable precedent.
 - Regarding separation distances the 22m separation distance has not been met between the two proposed apartment blocks and between the adjacent existing buildings.
 - It is submitted that the privacy and amenity of adjoining properties will be seriously injured due to the proposed developments proximity to boundary walls. The proposal to set the building back on the north and east side of the site is welcomed, however the proposed apartments would still tower over the

existing adjacent dwellings. The communal roof garden is of particular concern to the adjacent properties being directly overlooked.

- They request that the Board consider whether the proposed design of the proposed development is appropriate. It is submitted that the design does not accord with the key principles of the Design Development Standards with regards to the preservation of scenic landscapes and views having regard to the proximity to the preserved woodland to the north of the site.
- It is considered that the scale of the development would cause visual intrusion and would unduly detract from the surrounding area as it does not respect the existing adjoining development in terms of the height, scale, materials and finishes.
- It is submitted that the separation distances proposed between the proposed development and the adjacent properties will cause serious overlooking and overshadowing issues.
- The character of Fossa village is established by low density development in the form of two and three storey residential and local retail development. The proposal does not adequately respond to the established character and pattern of development in Fossa village having regard to the design and form and excessive height and scale proposed which will have an overbearing impact on adjoining properties.
- The residential mix proposed does not cater for all aspects of the community or family size.
- The nature of the open space proposed that it is dissected by the access road is of concern in terms of its usability.
- Regarding traffic and access, it is considered that the proposed development will significantly increase the traffic volumes in the vicinity of the site.
- The N72 is a heavily used road which forms part of the Ring of Kerry with access to major tourist attractions. It is considered the proposed access and level of traffic will generate a traffic hazard which has not been adequately addressed by the Planning Authority.

- It is submitted that the new proposed access point was not addressed in the Road Safety Audit submitted at further information stage.
- The Road Safety Audit appears to have been carried out on an interim proposal not the scheme originally submitted and not the amended scheme submitted at further information stage.
- Due to the rural nature of the surrounding area, there are no footpaths or streetlighting on the main road leading to the site.
- The recent proposal for the road upgrade in Fossa has not taken into account this new development. Under the revised proposal there is no new footpath.
- The Planning Authority requested the changes to the existing apartment building in the applicant's landholding be regulated however, these changes have not been addressed nor retention permission applied for.
- The applicant did not provide details on the impact of the proposal to the preserved woodland at the northern boundary. Although the proposed apartment blocks have been set back the impact of the buildings on the woodlands needs to be reviewed and addressed.
- It is submitted that the subject proposal is overscale, overbearing and would have a significantly injurious impact on neighbouring property and the character of Fossa.
- If the subject proposal is permitted it is of fundamental importance that the scale of the scheme is reduced in order to mitigate the severe impact on neighbouring property and the character of the area.
- It is recommended that the Board omits a floor of the proposed apartment block, reducing it to a maximum of 3 storeys in height. The removal of a floor would go some way to mitigate the visual impact and potential for overlooking/overshadowing arising from the development.
- It is highlighted in the appeal that the Council appear to have made a clerical error in its decision on condition no. 6, as it does not reference the scheme as submitted as Further Information stage on 14/4/2022.

- For all of the reasons set out in the appeal it is submitted that the proposal is contrary to the proper planning and sustainable development of the area. It is requested that the Board overturn the decision of the Planning and refuse permission.

6.2. Applicant Response

A response to the appeal was submitted by Annie Sheehan Architectural Design.

The issues raised are as follows;

- In relation to the issue of zoning the site is zoned 'M2' – mixed use under the Killarney Municipal District Local Area Plan 2018-2024. The sites zoning is primarily for mixed use and any other uses appropriate to the town centre in areas zoned mixed use.
- Regarding Fossa village, it is stated that while population figures are not available for the village, the population of Killarney has proven to be consistently rising in recent years. With the growth in job provision, it is clearly evident that the proposed multi-residential development constitutes a use appropriate to the site location.
- The Planning Authority described the development as more sustainable than the buildings located on neighbouring properties. The Planning Authority also considered that the development would not look out of place in its proposed location and that the proposed development “meets relevant standards of layout, density and design and would be appropriate at this location.”
- In relation to the matter of density the site has an area of 0.442ha and the number of dwelling units proposed is 18, which equates to 40.79 dwellings per hectare.

- It is stated that the proposed apartment building has a set back of over 84m from the public road the N72. The building has been placed to the north and rear of the site in order to minimise any interference it may have on neighbouring properties.
- It is acknowledged that the proposed residential development is of a higher density than its immediate neighbouring buildings. However, the creation of a higher density without compromising the utility of residents lends itself to a sustainable residential complex.
- Regarding the height of the proposal, the apartment building is three stories above the current ground level of the site with a basement parking level built into the slope of the existing site.
- The proposal is only four stories above the existing ground level at the stair/lift core and internal communal amenity spaces located on the western block. The height presented on the eastern block of the apartment building is significantly less than a storey taller than its neighbouring Cunningham dwelling.
- The western block appears taller in elevation. The fourth floor elements have minimal areas and are set back 9.9m from the building perimeter. The proposed building height will not affect the height line of existing buildings as the current line is scattered and is a mix of various sizes and heights of units. The apartment building has been designed to undulate with the woods behind, creating a flowing and calming rhythm to the eye as the roofs appear to move with the trees.

- Regarding separation distances all units in the complex have been designed to not have any window or door openings capable of overlooking adjacent properties on the east and west facades.
- The main part of the proposed development is located to the north of its site, therefore minimising any overshadowing of adjacent properties.
- The Right to Light studies submitted with the further information indicate that both the existing Cunningham residence and the proposed apartment building receive angles of natural light well in excess of the UK standards.
- The proposed development aligns with the key principles of Kerry County Development Plan 2015-2021 with regards to the preservation of scenic landscapes and views in the areas as well as having regard to, its proximity to the preserved woodland to the north of the site.
- The appeal states that the proposed development does not adequately regard the proximity of the proposal to the woodlands directly north of the site. This is incorrect. The placement of the proposal to the rear of the site maximises the views of the woods available to those who pass along the N72. The apartment building itself is discreet due to its siting away from the N72 and also it does not block views of the woods.
- The proposed complex consists of a mixture of four-bedroom houses and three-bedroom apartments which perfectly accommodate the demographic of young families that are drawn to Fossa village. The mixture of unit size also allows flexibility for future residents to use bedrooms for other purposes including work spaces or living rooms.

- Regarding open space provision, a communal garden area to the south will allow children to play within the development. The proposed private amenity areas and public amenity areas are well in excess of the minimum required areas as per Sustainable Urban Housing: Design Standards for New Apartments.
- Regarding the proposed vehicular access, the proposed site plan submitted with the further information show the features implemented to maximise the road safety of the proposal. The submitted Road Safety Audit Part 1 and Part II provides detailed information on road safety measures.
- A cycle path currently exists on the southern side of the N72, and a public lighting network begins approximately 90m to the east of the site. It is noted that proposed upgrades for roads in the parish of Fossa will significantly increase the safety of pedestrians and cyclists in the village centre.
- The appeal refers to the proximity of the proposed development to the woodland directly to the north of the site. The appeal stated that the proposal does not have adequate regard to the woodland. The placement of the proposal to the rear of the site maximises the views of the woodland available for those who pass along the N72 road. The upper levels of the apartment building were specifically separated into two individual blocks in order to frame a view of the woodland through the centre.
- A report prepared by qualified professionals (Michael Murphy, M.SC Environmental Sciences and Tom O'Byrne, Woodland Ecologist) was submitted as part of the further information response to Kerry County Council. The report assesses the impact of the proposed development on the trees and woodland to the north of the site.

- Following this report the proposal was moved 6.6m from the northern boundary, this is greater than the recommended distance stated in the report.
- The appeal suggests that the Board could consider the omission of a floor of the apartment building. The first party wish to highlight the fact that the proposal is currently 3 storeys in height above basement parking level, and is less than one-storey higher than its immediate neighbouring building. The architectural designer consciously kept the floor and roof levels as low as possible. The parking level of the proposal is entirely held within the existing slope of the site and is completely submerged at the buildings rear, allowing the building to position itself in conjunction with the existing site contours.
- It is concluded that the proposed development is in accordance with the proper planning and sustainable development of its site and context.

6.3. Planning Authority Response

- The Planning Authority considers that the issues raised in the third party appeal have been addressed in the Planner's Reports on the further information requested and the final assessment. It should also be noted that the application and further information were sent to the Roads Transportation and Marine Section of Kerry County Council for comments.

7.0 Assessment

I consider that the issues arising in the appeal can be addressed under the following heading:

- Policy context
- Design and visual amenity
- Impact upon residential amenity

- Access and traffic
- Appropriate Assessment

7.1. Policy Context

- 7.1.1. The lands in question are located within the development boundary of the village of Fossa Tralee on lands zoned Objective 'M2' – Village in the Killarney Municipal District Local Area Plan 2018-2024. The proposal entails the construction 18 no. residential units comprising 12 no. apartments within a four storey building and 6 no. two-storey dwelling houses. The site has an area of 0.442 hectares the proposed density would be equivalent to 40.72 units per hectare.
- 7.1.2. It is contended in the appeal that the proposed development with the quantum and scale of residential development proposed on a site zoned mixed uses would materially contravene the zoning objective of the Killarney Municipal District Plan 2018-2024. In relation to residential development, it states that future residential development will only be permitted on appropriately zoned lands, such as R1, new/proposed residential and R2 existing residential or M2 Town/village centre (where gap sites or opportunities for redevelopment exist), infill sites and on sites contiguous with the town/ village centre. This policy seeks to prevent leapfrogging of sites, to ensure a sustainable and compact urban form, restrict the demand for out of town retailing and ensure that residents are within easy walking distance of town centre facilities. It further advises that new development schemes should contribute towards the consolidation of the settlement and development of a sense of place. Development shall be encouraged first on infill, brownfield and suitable backland sites. In line with this the scale of new residential developments shall be in proportion to the pattern and grain of existing traditional settlements. A mix of housing types should be provided in any one development to provide for the varying housing needs of the public and to adapt to changing demographic trends. Housing developments with a mix of housing types also make for a more interesting and attractive estate in terms of design and layout.
- 7.1.3. As detailed in the Killarney Municipal District Local Area Plan the Section 2 refers to Zoning/Code and it provides a matrix of the various zonings and the classes of use and details whether uses are not normally permitted, open to consideration or

permitted in principle. Residential is open to consideration within the M2 – Village centre zoning. According, I would not concur with the assertion in the appeal that the proposed development would contravene materially the zoning objective of the subject lands. I would note that there is a significant portion of other lands within the village of Fossa which are zoned M2 – Village centre zoning. Therefore, I would consider that the development of the subject site for residential purposes would be acceptable and accordance with zoning subject to all other relevant planning considerations being satisfactorily addressed.

Density

- 7.1.4. The third party appeal contends that the proposed density is out of character with the surrounding area and excessive for the site. I note that the Kerry Development Plan 2022 – 2028 and also the Killarney Municipal District Local Area Plan 2018-2024 do not provide specific densities requirements.
- 7.1.5. Specifically, it is set out in Killarney Municipal District Local Area Plan 2018-2024 under the section referring to residential developments that there is no reference in this plan and in the land use zonings to residential densities. The appropriate density for applications for housing developments will be considered by the Planning Authority on a case by case basis. The quality of the design of the scheme will also heavily influence the decision. In general housing densities will be higher closer to the town and village centre and lower towards the edge of settlement. In the majority of the settlements infill and vacant sites are available within close proximity to the town/village centre. It is proposed to prioritise the development of residential units on vacant and infill sites within existing developments in particular.
- 7.1.6. National Policy Objective 35 of the National Planning Framework seeks the provision of increased residential density in settlements.
- 7.1.7. The appeal refers to Circular Letter NRUP 02/2021 issued by the Department of Housing, Local Government and Heritage on 21 April 2021. The Circular Letter refers to 'Development within small Towns and Villages' it seeks that An Bord Pleanála and Planning Authorities apply a graduated and responsive, tailored approach to the assessment of residential densities in Peripheral and/or Less Accessible Urban Locations, as defined in the Apartment Guidelines and as they

apply to towns of all sizes, to ensure that such places are developed in a sustainable and proportionate manner. In relation to small towns and villages they are defined within Section 6.0 of the Sustainable Residential Development Guidelines as those with a population ranging from 400 to 5,000 persons. Section 6.11 of the Guidance provides a more clearly graduated approach to the application of densities within such locations namely: -

- Centrally located sites: 30-40 + dwellings per hectare;
- Edge of centre sites 20-35 dwellings per hectare;
- Edge of small town/village: 15-20 dwellings per hectare.

7.1.8. It is submitted in the appeal that the Circular Letter directs Planning Authorities to make a considered assessment of density having regard to the size and scale of the receiving environment. The site is within the small settlement of Fossa which has not been identified in the Development Plan as being appropriate for residential expansion. The location of the subject site within the centre of the village of Foss as such it can be view as a centrally located within the village while the above refers to a density of 15-20 dwellings per hectare I would note that it refers to the edge of settlements and that Section 6.12 of Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) sets out that such densities were prescribed in order to offer an effective alternative to the provision of single houses in surrounding unserviced rural areas, it is appropriate in controlled circumstances to consider proposals for developments with densities of less than 15 - 20 dwellings per hectare along or inside the edge of smaller towns and villages.

7.1.9. The Ministerial Guidelines, Sustainable Urban Housing: Design Standards for New Apartments (2023), identify the types of locations in cities and towns that may be suitable for apartment development. Three categories of location are identified (1) Central and/or Accessible Urban Locations (2) Intermediate Urban Locations (3) Peripheral and/or Less Accessible Urban Locations.

7.1.10. Having regard to location of the site within the development boundary of the village of Foss, I would consider that the site can be identified to be an 'peripheral and/or less accessible urban locations, as per the Sustainable Urban Housing: Design Standards for New Apartments (2023). Such a location as detailed in the

Guidelines, are generally suitable for limited, very small-scale (will vary subject to location), higher density development that may wholly comprise apartments, or residential development of any scale that will include a minority of apartments at low-medium densities (will also vary, but broadly <45 dwellings per hectare net), including sites in small towns and villages. The guidelines advise that while the provision of apartments may not be required below the 45 dwellings per hectare net density threshold, they can allow for greater diversity and flexibility in a housing scheme, whilst also increasing overall density. Accordingly, apartments may be considered as part of a mix of housing types in a given housing development at any urban location, including suburbs, towns and villages.

- 7.1.11. Accordingly, in relation to the proposed density of 40 units per hectare, having regard to the National guidance in respect of density and the location of the site in a village centre context, I would consider that a density such as that proposed under this scheme can be considered subject to the development being acceptable in terms of all other relevant planning considerations.

7.2. Design and visual amenity

- 7.2.1. The grounds of appeal refer to the design of the scheme. It is contended that the proposed scheme does not adequately respond to the established character and pattern of development in Fossa village having regard to the design, form, height and scale of proposed development. The appeal also refers to the proximity of the proposed apartment buildings to the preserved Woodland to the north.
- 7.2.2. In relation to the matter of visual impact the subject site at Fossa is not located within a designated visually sensitive area or within any views and prospects. As indicated on the Map of Fossa contained within the Killarney Municipal District LAP 2018-2024 there is a listed view/prospect from the N72 to the south towards Lough Leane. The appeal site is situated on the opposite side of the N72 to the north this view. Accordingly, I would consider that the subject development will not affect this view.
- 7.2.3. As part of the further information requested the applicant was required to submit a photomontage of the proposed development and adjacent properties from various viewpoints along the N72. In relation to the submitted visual assessment I note that photomontages have been provided from five viewpoints, I am satisfied that the

photomontages provided from the selected viewpoints which form the basis of the visual impact assessment are representative of the extent of the visual impact upon the immediate surrounding area.

- 7.2.4. In relation to the viewpoint no. 1, from the N72 north into the site. This is a close range view which includes the proposed apartment buildings and a number of the proposed dwellings relative to the existing property to the south and also the neighbouring property to the east. The proposed development is setback from existing properties, and it has the woodland to the north as a background. Having regard to the higher ground level of the woodland the roof level of the proposed apartment buildings are set well below the top of the trees. In relation to viewpoint no. 2 taken in a north-west direction towards the site from the N72. This is a close range view, and it indicates the proposed development on the western side of the site relative to the property to the north. The proposed development appears to be well setback from the property to the north and it does appear not excessive in scale. Viewpoint no. 3 is taken from the N72 to the front of the property immediately to the south of the appeal site. From this viewpoint it is just the eastern most dwelling which is visible. Viewpoint no. 4 is taken from the N72 north-east towards the site. This is a close range view, and it indicates the proposed development on the western side of the site. The apartment building to the western side of the scheme and two dwellings are visible from this viewpoint. In relation to viewpoint no. 5 this from the N72 to the east of the appeal site. From this viewpoint only a small section of the western apartment building and the roofs of two of the proposed dwellings would be visible.
- 7.2.5. The grounds of appeal raised concern in relation to the height of the proposed development relative to the surrounding development. The surrounding properties along this section of the N72 are predominately two-storey and there are some properties which have accommodation in the roof space. This includes the existing property immediately to the south of the site. The proposal includes 6 no. two-storey dwellings and 2 no. apartment buildings which are three-storey over basement. The proposed dwellings have a ridge height of 7.2m. Due to the variation in site levels with the ground level rising to the north it is proposed to build the apartment buildings into the site. As indicated on the submitted elevations the height of the eastern and western apartment buildings from the existing ground level to the front would be 13.5m. The provision of a communal roof garden to the western apartment building

means that there is stair and lift access to this area with an inset section of the building proposed at roof level. I note this section of the building is set back from the front of the building.

- 7.2.6. Having regard to the site context and layout proposed, specifically the setback nature of the proposed apartment buildings from the N72 to the south with a separation distance of approximately 80m provided and the context of existing mature woodland area immediately to the north of the site which provides a backdrop which serves to integrate the proposed development into the surrounding area, I am satisfied that it would not form a visually obtrusive or incongruous feature and that it would not unduly interfere with the character of the landscape.
- 7.2.7. Accordingly, having regard to the siting and design of the proposed development, and topography of the area I am satisfied that the proposed development would not unduly interfere with the character of the landscape or streetscape of the area or form a visually obtrusive or incongruous feature.
- 7.2.8. The matter of the proximity of the apartment buildings to the preserved Woodland to the north of the site was raised in the appeal. The Planning Authority sought further in relation to the issue. They required that the applicant submit a report from suitably qualified person to assess the impact of the proposed development on the trees. Southern Scientific Services Limited provided a detailed response on the matter. As detailed in the response the trees in the wood are native or planted and are a mix of oaks, holly, beech and horse chestnut. There are a small number of oaks which are located close to the boundary fence and they are of primary concern. An old stone fence forms the boundary between the site and the woods to the north. An excavation of the soil adjacent to the rear boundary of the site showed very little evidence of roots due to the depth of the stone wall foundation which limited the movement of the roots southwards. The response highlighted that access to sunlight to the trees located to the north of the boundary fence is an important consideration. Having regard to the elevated nature of the woodland relative to the site it was determined that the proposed building with respect to the ground at the base of the trees requires that the building must be setback at least 4.5m. It is set out in the response that having regard to the necessity of maintaining the aesthetics of the woods with respect to the symmetry of the trees and allow adequate sunlight to ensure normal growth during the growing season it is advised that the setback

distance of the rear elevation structural wall of the building would be at least 6.5m away from the stone wall fence.

- 7.2.9. I note the report of the Planning Officer which stated that the proposed relocation of the buildings has provided a setback of 6.6m from the tree line to the north. Therefore, this setback is over the recommended distance as per the report from Southern Scientific Services Limited. Accordingly, I am satisfied that the matter of the separation distance between the proposed development and the preserved Woodland to the north has been addressed.
- 7.2.10. The appeal refers to provision of open space. It specifically refers to the nature of the open space proposed that it is dissected by the access road. In relation to the provision of public open space within the scheme a communal garden to the south area at the front of the site is proposed. This has an area of 556.32sq m. Two casual seating areas are proposed within the garden area. I note that this area is divided by the internal access road. A footpath is proposed along the eastern side of the access road which provides good pedestrian access to the communal garden area.
- 7.2.11. Section 1.5.4.4 of Development Management Standards & Guidelines section of the Development Plan refers to Public Open Space. It sets out that public open space should be provided at a minimum rate of 15% of total site area. The open space should be designed to complement the residential layout and be informally supervised by residents. The spaces should generally be centrally located within groupings, and be visually and functionally accessible, of a suitable gradient, useable and overlooked by a maximum number of dwellings. In relation to infill sites it is stated that a minimum of 10% may be provided as public open space. Having regard to the site context I would consider that it would constitute an infill site where 10% public open space would be acceptable. The area proposed comprises the communal garden of 556.32sq m. The site has an area of 0.442 hectares (4,420sq m). Accordingly, 10% of the site area is 440sq m and therefore the public open space proposed is in accordance with the Development Plan requirements.
- 7.2.12. It is further set out under Section 1.5.4.4 of the Plan that in addition to private open space, provided by the Developer, communal open space must also be provided for apartments, in accordance with the minimum standards set out in 'Sustainable Urban

Housing, Design Standards for New Apartments' Section 28 Guidelines. Communal open space is for the exclusive use of the residents of the development and should be accessible, secure, and usable outdoor space which is inclusive and suitable for use by those with young children and for less mobile older persons. A roof garden is proposed to the western apartment building. This has an area of 181.27sq m. The proposed roof garden is accessible by stairs and lift to residents. Having regard to the design and accessibility of the proposed roof garden I consider that it satisfies this Development Plan requirement.

7.3. Impact upon residential amenity

The grounds of appeal raised the issues of overlooking, overbearing and overshadowing. The proposed height of apartments is of concern in relation to privacy and amenity of adjacent properties. It is submitted in the appeal that the design, layout, scale, mass and height of the development did not have regard to the modest height and character of the adjoining residential properties. The appeal referred to the separation distance between the two proposed apartment blocks and between the adjacent existing buildings. It was submitted in the appeal that the privacy and amenity of adjoining properties will be seriously injured due to the proposed developments proximity to boundary walls.

Overlooking/loss of privacy

- 7.3.1. In relation to the issue of overlooking the closest residential properties to the proposed apartment buildings are the neighbouring dwellings to the east and the property to the south. The apartment building proposed to the eastern side of the site would be located approximately 5m from the eastern site boundary. The closest dwelling is located to the eastern of the side of this proposed apartment building. The separation distance between the proposed apartment building at the closest point and the property to the east is 9m. I note that the windows in the apartments on the east facing elevation are all proposed with a sill height of 1800mm to protect the privacy of neighbouring properties.
- 7.3.2. The appeal refers to the proposed communal roof garden. I note that no roof garden is proposed to the eastern apartment building. The roof garden is proposed to the apartment building on the western side of the site. I note that the apartment building

to the western side of the site is setback 39m from the rear of the closest dwelling to the west and the eastern corner of the building is located over 30m from the eastern site boundary. Having regard to the siting of the western apartment building relative to the neighbouring properties I am satisfied that it will not cause any undue overlooking of the surrounding residential properties.

- 7.3.3. Accordingly, having regard to the siting and design of the proposed scheme and the separation distance provided I am satisfied that that no material overlooking or loss of privacy will occur.

Overbearing

- 7.3.4. Regarding the matter of overbearing impact, the Planning Authority sought further information in relation to the design of the scheme specifically in relation to the proposed apartment buildings relative to the site boundaries. They required that the top floors should be setback to help integrate the development into the surrounding area.
- 7.3.5. In response to the matter the design of the proposed apartment buildings were revised with the proposal moved further from the northern and eastern boundaries. The eastern apartment building is three-storey over basement. I note that the third floor is marginally inset 200mm from the eastern side of the building. The neighbouring property to the east is a large, detached dwelling which is full two-storey with dormer accommodation provided in the roof space. Consequently, as indicated drawing no: A3.01 the ridge height of this property is roughly inline with the top of the second floor of the eastern apartment building. The roof design of the proposed eastern apartment building features five separate sections of a mono-pitched roof. I would consider this design features serves to reduce the visual impact and the marginal inset nature of the third floor also serves to mitigate any potential overbearing impacts.
- 7.3.6. The proposed apartment building to the western side of the site is sited further away from the neighbouring properties and although it is three storey over basement with a roof garden it is therefore well set back from neighbouring property. I consider that having regard to the siting and design of this element of the scheme relative to surrounding properties that it does not present any undue overbearing impacts.

Overshadowing

- 7.3.7. In relation to the matter of overshadowing as part of the further information response a Right to Light Study was provide in respect of the closest neighbouring property to the east. The study indicated that the patio door to the west facing gable elevation was of the biggest concern in relation potential loss of light. As indicated on drawing no: A5.01 the total amount of sunlight available to the opening is 54°. Therefore, as this is in excess of 45° the proposed development would not cause a substantial interference to this specific opening.
- 7.3.8. An Overshadowing Study was submitted with the application. Having regard to the orientation of the site and siting of the proposed buildings relative to existing surrounding development and as indicated on the submitted shadow study I am satisfied that the proposed development will not result in any significant additional overshadowing of the neighbouring residential properties.
- 7.3.9. In conclusion, having reviewed the proposed design and layout of the scheme, relative to the existing surrounding properties, I consider having regard to the proposed siting of the apartment buildings and relative separation distances to the existing property that the proposed scheme would not result in any material overlooking, overbearing or overshadowing of neighbouring residential properties.

7.4. Access and traffic

- 7.4.1. The proposal entails the provision of a total of 18 no. dwelling units. Vehicular access is proposed onto the N72. The grounds of appeal have raised concern regarding the additional vehicular traffic the scheme would generate and the impact it would have on the existing roads.
- 7.4.2. As part of the further information the applicant was requested to carry out a Stage 1 and 2 Road Safety Audit (RSA) should be carried out in accordance with TII publications. It was required that any recommendations arising shall be incorporated in the proposed development by amendment to the existing planning application.
- 7.4.3. It was further required that the proposed access road to serve the development be upgraded in accordance with Site Development Works for Housing Areas and comply with requirements of the County Development Plan and to take into account any recommendations of the safety audit.

- 7.4.4. As proposed under the revised plans submitted as part of the response to the further information requested by the Planning Authority, it is proposed to access the housing scheme via a new vehicular entrance. The site is located within the 60kmp speed limit zone and the desirable minimum stopping sight distance is 90m. I note that having regard to the location of the proposed vehicular entrance onto a straight section of the N72 that sightlines in excess of 90m are available.
- 7.4.5. The proposed access road has a width of 5.2m and a 1.2m footpath along its eastern side. The Road Safety Audit identified a number of areas where roads design and access proposals were required to be changed or revised. As per the Road Safety Audit Feedback form it is confirmed that traffic calming measures are provided with reference to DMURS and the Traffic Management Guidelines. The design of the access road has been revised with the proposed alignment less straighten to reduce speeds. It is confirmed that restricted visibility has been eliminated at junctions and that a change in road materials are proposed to the south of the site and that the car parking junction to reduce speeds.
- 7.4.6. In relation to level of traffic the scheme would generate, given the relatively limited scale of the scheme with a total of 18 no. residential units proposed that there would be a relatively modest level of traffic arising from the proposed development which will not give rise to any significant impact upon the existing road network and junctions in the vicinity of the site.
- 7.4.7. The grounds of appeal refers to the absence of a footpath along the N72 in the vicinity of the site. I note that there is no footpath along the section of the N72 from the junction with the R563 to west of the site within Fossa. There is footpath along the northern side of the N72 circa 218m to the west of the appeal site. There is a cycle track running along the southern side of the N72 from the junction with the R563 west serving the village of Fossa. Therefore, while there is the absence of a footpath in the vicinity of the site, I consider that the location of the cycle track along the southern side of the N72 positively contributes to means of access available to the scheme.
- 7.4.8. In respect of the proposed vehicular access arrangements, I note that the Planning Authority in their assessment of the scheme were generally satisfied. The car parking arrangements to serve the scheme as indicated on the revised layout

submitted to the Planning Authority on the 14th of April 2022 comprise a total of 16 no. car parking spaces at surface level located to the front of the units. This includes 1 no. disabled access car parking spaces. A further 20 no. car parking spaces are proposed at basement level within the proposed apartment building. A total of 36 no. spaces are proposed.

- 7.4.9. Car parking standards are set out under Table 4 of the Development Management Standards & Guidelines section of the Kerry County Development Plan 2022-2028. The site is located within Area 2 as the site is located on lands zoned M2. It is required that in Area 2 that 1 car parking spaces per bedroom in each apartment is provided and 1 car parking spaces per dwelling house is provided. 12 no. apartments are proposed, and each apartment has 3 no. bedrooms. Therefore, a minimum of 36 spaces would be required to serve the apartments within the scheme and 6 no. spaces would be required to serve the dwellings within the scheme. 42 no. Therefore, there is a shortfall of 6 no. spaces car parking spaces as per the requirements of the County Development Plan requirement. Section 4.20 of Design Standards for New Apartments, Guidelines for Planning Authorities (2023) refers to car parking. It advises that as a benchmark guideline for apartments in relatively peripheral or less accessible urban locations, one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required. On that basis the requirement for the apartments within the proposed scheme would be 12 no. spaces for each apartment with a further 4 no. spaces for visitor parking. Therefore, based on the advice in the guidelines a total of 16 no. spaces would be required to serve the apartments. As a total of 20 no. car parking spaces are proposed at basement level this provides the necessary spaces to serve the apartment units.
- 7.4.10. While I would not that there is a shortfall of car parking in relation to the requirements of Table 4 of the Development Management Standards & Guidelines section of the Kerry County Development Plan 2022-2028, the Planning Authority were satisfied with the overall car parking provision. Accordingly, having regard to the car parking requirements set out in the Guidelines, Design Standards for New Apartments, I am satisfied with the level proposed within the scheme.
- 7.4.11. A bicycle storage room with a lockable door and stacked bicycle storage is proposed to hold up to 20 no. bicycles. Section 1.20.9 of the Development Management

Standards & Guidelines section of the Kerry County Development Plan 2022-2028 refers to bicycle parking standards. It sets out that all new development included in any of the land use classes should provide a bicycle parking bay/bike shelter.

Accordingly, I am satisfied with the bicycle parking provision within the scheme.

7.4.12. In conclusion, I am satisfied with the proposed car parking provision, bicycle parking provision and vehicular and pedestrian access arrangements.

7.5. Appropriate Assessment

Stage 1 Screening

7.5.1. The proposed development would not be located within an area covered by any European site designations and the works are not relevant to the maintenance of any such sites. The European site Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site No. 000365) is located 473m to the south of the development site. Killarney National Park SPA (Site No. 004038) is located 456m to the south of the development site.

7.5.2. The qualifying interests/special conservation interests of the designated sites, are summarised as follows:

Killarney National Park, Mcgillicuddy's Reeks and Caragh River Catchment SAC	Killarney National Park SPA
<p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</p> <p>Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletea uniflorae</i> and/or <i>Isoeto-Nanojuncetea</i> [3130]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>European dry heaths [4030]</p> <p>Alpine and Boreal heaths [4060]</p>	<p>Merlin (<i>Falco columbarius</i>) [A098]</p> <p>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]</p>

<p>Juniperus communis formations on heaths or calcareous grasslands [5130]</p> <p>Calaminarian grasslands of the Violetalia calaminariae [6130]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Depressions on peat substrates of the Rhynchosporion [7150]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Taxus baccata woods of the British Isles [91J0]</p> <p>Geomalacus maculosus (Kerry Slug) [1024]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Euphydryas aurinia (Marsh Fritillary) [1065]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p> <p>Najas flexilis (Slender Naiad) [1833]</p> <p>Alosa fallax killarnensis (Killarney Shad) [5046]</p>	
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7.5.3. The Conservation Objectives for Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365) are to

maintain/restore the favourable condition of the qualifying habitats and species as defined by a list of attributes and targets.

- 7.5.4. The Conservation Objectives for Killarney National Park SPA (Site Code 004038) are to maintain or restore the favourable condition of the bird species listed as listed as Special Conservation Interests for the SPA as defined by a list of attributes and targets.
- 7.5.5. The subject site is located within the village of Fossa. The proposed development includes attenuation measures would reduce variations in the runoff from the site. There is no potential, therefore, for the proposed development to alter the volume or characteristics of the flows into or from the surface water sewerage system that could conceivably have a significant effect on any Natura 2000 site. The foul effluent from the proposed development would drain to the wastewater treatment system for Killarney. The scale of the proposed development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant effect on any Natura 2000 site.
- 7.5.6. In relation to potential in cumulative/in-combination, no such impacts between the proposed development and other plans or projects are envisaged. Having regard to the site's location in an urban area, the nature and scale of the works, the separation distance between the site and the SAC and the SPA and to the characteristics of the designated sites and the qualifying interests, it is considered that the proposed development would not be likely to have a significant effect on either of the designated sites.

AA Screening Conclusion

- 7.5.7. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code 000365) and Killarney National Park SPA (Site Code 004038), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. I recommend that planning permission is granted for the proposed development in accordance with the following reasons and considerations:

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of Kerry County Development Plan 2022 – 2028 and the Killarney Municipal District Local Area Plan 2018 – 2024, and in particular the M2 – Village Centre zoning of the site, and having regard to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and would be acceptable in terms of pedestrian and traffic safety. 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 14th day of April 2022, 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 the 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. Prior to the commencement of development, the developer shall enter into water and/or waste water agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

3. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

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

Reason: In the interest of public health.

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

Reason: In the interest of visual amenity.

6. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets. Drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and of traffic and pedestrian safety.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

8. 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.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

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

Reason: In the interests of amenity and public safety.

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

Thereafter, the waste shall be managed in accordance with the agreed plan.

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

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future management of public open spaces, roads and communal areas shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

13. Proposals for an estate/street name, house/apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility.

14. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than [1:500] showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include prunus species]

- (ii) Details of screen planting [which shall not include cupressocyparis x leylandii]
 - (iii) Details of roadside/street planting [which shall not include prunus species]
 - (iv) Hard landscaping works, specifying surfacing materials, furniture [play equipment] and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
- (c) A timescale for implementation [including details of phasing]

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 [five] 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 interest of residential and visual amenity.

15. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the

matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

16. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of streets, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part therefore to the satisfactory completion of any part of the development. The form and amount of security shall be as agreed between the planning authority and the developer, or in default of an agreement shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

17. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and

the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Siobhan Carroll
Planning Inspector

1st of November 2023