



An
Bord
Pleanála

Inspector's Report ABP-314128-22.

Development	Permission to construct a 3-storey apartment block consisting of 10 units.
Location	Port Road, Inch/Coollegrean, Killarney, Co Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	21/1107.
Applicant(s)	Ross Building and Maintenance Solutions Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Portal Asset Holdings Ltd.
Observer(s)	None
Date of Site Inspection	23/09/2022.
Inspector	A. Considine.

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1.0 Site Location and Description

- 1.1. The site is located on zoned lands within the settlement boundary of the town of Killarney, Co. Kerry, and to the north west of the town centre. High Street and Main Street, the primary commercial area of the town of Killarney, lie within 1.1 and 1.3km of the subject site, accessed via New Road. The site is located immediately adjacent to a detached residential property to the south, and in proximity to the Killarney National Park Macgillycuddy's Reeks and Caragh River Catchment SAC and the Killarney National Park SPA, which lies across the Port Road. The Deenagh River forms the boundary of the National Park and the public road.
- 1.2. To the east of the site, there is a bank of land which is zoned for residential purposes, with the access to these lands located immediately to the north of the subject site. Further north, there is a detached two storey house on a large site, with a carpark and access to the Parklands Holiday Homes development. To the south, and beyond the detached two-storey house, are the Port Cottages, which are protected structures. The Killarney Community College, with its associated grounds, is located at the junction of Port Road and New Road.
- 1.3. The site the subject of this appeal, has a stated area of 0.13ha and is currently overgrown. The front boundary comprises an old low rise stone wall with several trees and hedgerow vegetation directly inside the wall. The remaining boundaries comprise a mix of mature trees and hedges. The existing site levels rise from the roadside at the west towards the rear of the site (east).

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, to construct a 3-storey apartment block consisting of 10 number units, served by associated car and bicycle parking, and an external waste bin amenity enclosure, the units to be connected to public services and also to include all associated site works, all at Port Road, Inch/Coollegrean, Killarney, Co Kerry.
- 2.1. The application included a number of supporting documents including as follows:

- Plans, particulars and completed planning application form.
 - Cover letter which sets out a justification for the proposed development.
 - Design Statement.
- 2.2. On the 5th of October 2021, the applicants' agent submitted an email, acknowledging discussions in relation to Part 5 agreement.
- 2.3. Following the request for further information, the applicant submitted proposals to address the issues raised by the PAs request. The further information amended the scheme to provide for 10 no. units.
- 2.3.1. The response to the FI request was deemed significant and revised public notices were provided.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following the submission of the response to the FI request, decided to grant planning permission for the proposed development subject to 25 conditions.

3.1.1. Planning Reports

Planning Officers Report:

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the Killarney Town Development Plan policies and objectives. The report also includes a section on EIA and AA.

The Planning Report notes the zoning afforded to the site as well as its current overgrown state as well as its context in terms of surrounding development. The report notes that the principle of the development is acceptable given the R6 Existing Residential zoning afforded to the site but considers that the proposal represents an

overdevelopment of the site, suggesting that the proposed 12 units and 15 car parking spaces is too ambitious for the site, located outside of the town centre.

Further information was required in relation to a number of issues including AA, compliance with Part V, proximity of the development to site boundaries and potential impact on the retention of trees and amenity. In addition, contiguous elevations are required along with details of proposed bin store.

Following the submission of the response to the FI request, the planning officers report noted the response to the request issues, as well as the internal technical reports in relation to same. The final report accepts the response to the issues raised, which includes a reduced number of apartments to 10 and that the building has been relocated on the site so that it is 2m from the rear boundary. The need for retaining walls has been omitted and the report concludes that proposed development is acceptable. The report recommends that permission be granted for the proposed development, subject to 26 conditions. The SEP noted and endorsed the planning officers report, with the omission of 1 condition – which related to a management company.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.1.2. **Other Technical Reports**

Archaeologist Report: There are no recorded monuments located in proximity to the proposed development site which has previously been disturbed. No mitigation required.

National Road Design Office: No observations to make. The application should be referred to the relevant Municipal District Roads Engineer for a response.

Biodiversity Officer: The report notes the proximity of the site to the Killarney National Park, Macgillycuddy Reeks and Caragh Catchment cSAC. AA Screening required. The report also advises that badges are

known to occur in the area and there is a known badger set in proximity to the development. A badger survey is required.

Following the submission of the response to the FI request, the Biodiversity Officer concluded that AA is not required.

Fire Officer: No objection subject to the applicant being advised regarding Building Control Regulations and the need to obtain a Fire Safety Certificate and Disability Access Certificate.

Roads, Transport & Marine Killarney MD: The report recommends conditions to be attached to any grant of permission.

3.1.3. **Prescribed Bodies**

TII: Requires that the PA abide by official policy in relation to development on/affecting national roads. The Authority will not entertain future claims in respect of impacts on the proposed development if approved, due to the presence of the existing road or any new road scheme currently in planning. Refers to official policy including Sections 2.5 and chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) in particular.

Following receipt of the response to the FI request, a further letter advised that the position of the Authority remains as set out in the letter of 27th October 2021.

Irish Water: No objection subject to conditions.

3.1.4. **Third Party Submissions**

1 third party submission is noted in terms of the planning application submitted. The issues raised are summarised as follows:

- No objection in principle to the proposed development but raises concerns in terms of a number of aspects of the design which will have an adverse impact on adjacent lands and the character of the surrounding area as follows:

- The sections submitted do not reflect the ground levels relationship between the site and the R1 zoned lands.
- The need for retaining walls explains the actual levels on the ground.
- During Section 5 pre-consultation discussions with ABP, the need for sensitive treatment of levels along the western boundary of the zoned R1 lands was confirmed having regard to the existing dwelling and the desire to retain important trees and hedgerows.
- A number of trees on the third-party lands have been identified for retention, including a mature Wych Elm tree on the northern boundary of the proposed site. The root protection zone of this tree extends approximately 3.5m into the application site and is likely to be directly impacted by the proposed mass concrete retaining walls at this boundary.
- The proposed built relationship of the apartment block to the boundary is also a concern which comes within 1.7m of the northern boundary and 3.1m of the eastern boundary with windows directly overlooking at each floor.
- The proposal to provide a band of hedgerows/trees along the boundaries has not been shown on any section and the proximity of adjacent development and the narrow space between the proposed apartment building will significantly affect the ability to deliver the landscaping.
- The proposal to plant less than 0.5m from habitable room windows on the northern and southern boundaries will have a direct and adverse impact on the daylight reception in affected units.
- It is submitted that the site layout has been driven by the desire to accommodate car parking to the front of the site.
- It is considered that the development is over-development of the site and will be incongruent in the local area.

It is requested that a revised design be required.

Following the submission of the response to the FI request, no further objections are noted on the PAs files.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA refs 01/203635 & 06/204610: OPP granted on both occasions to Joan O'Shea to construct 2 no. 2-storey dwelling houses and all site development works on the subject appeal site.

PA ref 11/205260: Permission granted to Derval O'Connell to construct a two-storey house with attic conversions and all associated site works on the southern site.

Adjacent sites:

East (rear of subject appeal site)

ABP ref ABP-312987-22: Section 4 Application for the construction of 228 residential units was submitted to ABP. The Board refused planning permission for the proposed development for the following stated reason:

Having regard to the proximity of the subject site to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment candidate Special Area of Conservation (cSAC) (Site Code no. 000365) it is considered that:

The proposed development may result in increased artificial lighting generated at both the construction and operational phases of the development and that may impact on Lesser Horseshoe Bats that commute along routes to the west of the Port Road/ Deenagh River. The submitted Appropriate Assessment Screening does not provide sufficient scientific reasoning to clearly eliminate the likelihood of significant adverse effects.

In view of the site's conservation objectives and qualifying interests, the applicant has failed through the submitted Appropriate Assessment Screening to demonstrate that the proposed development would not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

PA ref 07/294845: Permission sought from Kerry County Council for the construction of 3 terraced houses, 4 own-door apartments, medical office (186 sq.m), shop unit (230 sq.m) and a new entrance off the Port Road; 8 no. underground LPG tanks and associated site and landscape works in relation to the future development of the remainder of the site. The PA granted permission, subject to 28 conditions, for 11 No. terraced houses, medical centre and 8 No. underground LPG tanks and associated site works, and landscape works at Coollegrean, Killarney.

PA ref 08/294908: Permission sought from Kerry County Council for the construction of 45 dwellings (consisting of 21 detached houses, 18 terraced houses and 6 courtyard houses) and 14 own-door apartments; an ESB Substation and associated site and landscape works, access roads and ancillary development in relation to this development and to the future development of the remainder of the site (EXTENSION OF DURATION GRANTED TO 13/5/2019). The PA granted permission, subject to 35 conditions, for 43 dwellings (consisting of 19 detached houses, 18 terraced houses and 6 courtyard houses) and 14 own-door apartments.

PA ref 08/294929: Permission granted by Kerry County Council for the construction of 38 no. dwellings, ancillary car parking and associated site and landscape works, access roads and ancillary development (EXTENSION OF DURATION GRANTED TO 06/01/2019), subject to 34 conditions.

PA ref 08/294935: Permission granted by Kerry County Council for the construction of a creche (591 sq.m) and 25 dwellings (consisting of 5 terraced houses, 10 courtyard houses, 6 town houses and 4 own door apartments), ancillary car parking

and associated site and landscape works, access roads and ancillary development (EXTENSION OF DURATION GRANTED TO 6/1/2019), subject to 39 conditions.

PA ref 17/473: Permission sought from Kerry County Council for the construction of Phase 1 of the Port Road Development comprising 120 residential units. This application was withdrawn prior to a decision issuing.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

5.1.2. A number of key policy objectives of the NPF are noted as follows:

- National Planning Objective 13 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”.
- 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”.
- 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”.

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:

- quality homes and neighbourhoods,
- places where people actually want to live, to work and to raise families, and
- places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.3. Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (DoHPLG, 2020):

5.3.1. These statutory guidelines update and revise the 2015 Sustainable Urban Housing: Design Standards for New Apartments Guidelines, and the 2018 Guidelines in relation to Shared Accommodation schemes. The objective is to build on the content of the 2015 apartment guidance and to update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply, the Government’s action programme on housing and homelessness Rebuilding Ireland and Project Ireland 2040 and the National Planning Framework, published since the 2015 guidelines. Aspects of previous apartment guidance have been amended and new areas addressed in order to:

- Enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas;
- Make better provision for building refurbishment and small-scale urban infill schemes;
- Address the emerging ‘build to rent’ and ‘shared accommodation’ sectors; and
- Remove requirements for car-parking in certain circumstances where there are better mobility solutions and to reduce costs.

5.3.2. The guidelines identify specific planning policy requirements in terms of apartments and Development Plans dealing with the mix of unit sizes, while Chapter 3 deals with Apartment Design Standards, including studio apartments, orientation of buildings and dual aspect ratios, storage provision, private amenity spaces and security considerations. Chapter 4 deals with communal facilities, including car and bicycle parking.

5.3.3. The primary aim of these guidelines is to promote sustainable urban housing, by ensuring that the design and layout of new apartments will provide satisfactory accommodation for a variety of household types and sizes – including families with children - over the medium to long term. These guidelines provide recommended minimum standards for:

- floor areas for different types of apartments,
- storage spaces,
- sizes for apartment balconies / patios, and
- room dimensions for certain rooms.

The appendix of the guidelines provides guidance in terms of recommended minimum floor areas and standards.

5.4. Urban Development and Building Heights Guidelines for Planning Authorities December 2018.

5.4.1. The guidelines encourage a more proactive and flexible approach in securing compact urban growth through a combination of both facilitating increased densities and heights, while also mindful of the quality of development and balancing the amenity and environmental considerations. Building height is identified as an important mechanism to delivering such compact urban growth and Specific Planning Policy Requirements (SPPRs) of the building height guidelines take precedence over any conflicting policies and objectives of the Dublin City Development Plan.

5.5. Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013

5.5.1. In terms of the design of the proposed development, including the entrance and access to the site, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DEMURS), DoTTS, March 2013. This Manual replaces DMRB in respect of all urban roads and streets and it does not differentiate between public and private urban streets, where a 60kph speed limit or less applies. The implementation of DMURS is obligatory and divergence from same requires written consent from relevant sanctioning authority (NRA, NTA or DTT&S). The Manual seeks to address street design within urban areas (ie. cities, towns and villages) and it sets out an integrated design approach.

5.6. Killarney Town Development Plan 2015 as varied and extended

5.6.1. The subject site is zoned R2 Existing Residential in the Killarney Town. Chapter 12 of the Killarney TDP deals with Land Use Zoning Objectives and Development Management Standards and Section 12.3.5 of the Plan deals with Existing Residential.

5.6.2. Section 12.20 of the TDP deals with apartments, with Section 12.20.2 stating that apartment developments are to be kept small in nature. In addition to the above, the following DM sections are relevant in that they relate to apartment developments:

- 12.21 Apartment Open Space
- 12.22 Daylight and Sunlight
- 12.23 Storage Areas and Communal Facilities
- 12.21 Building Design.

5.7. Killarney Municipal District Local Area Plan 2018-2024

- 5.7.1. The Killarney MD LAP sets out the local planning framework for the area with the exception of Killarney town. The Killarney Town Development Plan 2009-2015 (as extended) continued to apply to the area formerly administered by the Killarney Town Council. It is indicated that this Town Development Plan will remain in force until after the adoption of the new County Development Plan.

5.8. Kerry County Development Plan 2022-2028

- 5.8.1. The Board will note that the subject application was considered under the Killarney Town Development Plan 2009 – 2015. In the interim, the Board will note that the Elected Members of Kerry County Council adopted the Kerry County Development Plan 2022-2028 at a full Council Meeting on the 4th of July 2022. The Plan came into effect on the 15th of August 2022 and incorporates the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022, dated 5th December 2022. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site. The Killarney Town Development Plan 2009 – 2015 was incorporated into the new County Development Plan 2022 – 2028 on 4th July 2022.
- 5.8.2. Killarney is identified as a key town which is described as a ‘Large population scale urban centre functioning as self-sustaining regional drivers, and strategically located urban centres with accessibility and significant influence in a regional and sub-regional context’. In terms of the CDPs Settlement Strategy, it is an objective of the Council to, KCDP 3-4 refers ‘Deliver at least 30% of all new homes in the Key Towns of Tralee and Killarney within the existing built-up footprint of the settlements’.

- 5.8.3. Chapter 4 of the Plan deals with Towns & Villages and Section 4.3.8 deals with residential densities and building heights. It is an objective of the Council to, KCDP 4-40 refers, to ensure that developments have regard to national policy and Ministerial Guidelines.
- 5.8.4. Having regard to the proximity of the Killarney National Park, Section 11.2.1 of the Plan deals with European / National Designations and notes that exempted development in such areas is de-exempted where such works/development require an Appropriate Assessment. The following policies are considered relevant:
- **KCDP 11-1:** Ensure that the requirements of relevant EU and national legislation, are complied with by the Council in undertaking its functions, including the requirements of the EU Birds and Habitats Directives.
 - **KCDP 11-2:** Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.
 - **KCDP 11-3:** Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County.
- 5.8.5. Volume 2 of the Kerry CDP deals with Town Development Plans and zoning maps, while Volume 4 contains the relevant zoning maps for the towns, including Killarney.
- 5.8.6. Volume 2 Part 2 of the Kerry CDP deals with Killarney Town. The vision for Killarney is to create an attractive location to live, work and visit. It seeks to mirror the natural environment of Killarney National Park with an exceptional urban experience that sets Killarney apart as a world class tourism destination. The Zoning Objectives from the Killarney Town Development Plan 2009-2015 have been carried into the Kerry County Development Plan 2022-2028.

5.8.7. Section 2.2 of Volume 2 of the Plan deals with demographics in Killarney town and notes that a population allocation for the town is 1,630 and it is the intention of the plan to make provision for the development of 1,277 residential units (Objective KA 13 refers). Further relevant residential development objectives include:

- **KA 14:** Monitor the scale, rate and location of newly permitted developments and apply appropriate development management measures in order to ensure compliance with the Settlement Hierarchy and Strategy, including the population targets for the county.
- **KA 15:** Facilitate the provision of a range of housing solutions, to cater for the diverse housing demand within the town, catering for individuals and families at appropriate scales and attractive alternatives to urban generated housing in rural areas.

5.8.8. Given the proximity of the Killarney National Park, the following objectives are considered relevant:

- **KA 20:** Maintain and conserve the conservation value of the Killarney National Park as a European site (365 and 4038), a National Park and a UNESCO Biosphere Reserve and the Rivers Flesk and Deenagh (part of a candidate Special Area of Conservation (cSAC)) during the lifetime of this plan and to ensure a screening determination for an Appropriate Assessment is carried out where development projects are likely to have significant effects on this European site whether within or outside the boundary of the European site.
- **KA 21:** Ensure developments in the plan area, particularly within brownfield sites, are informed by Lesser Horseshoe Bat surveys and impact assessments where appropriate, undertaken by a suitably qualified individual.
- **KA 22:** Ensure that there is no significant increase in artificial light intensity adjacent to Lesser Horseshoe Bat roosts named in the Conservation Objective Report for the Killarney National Park, Macgillicuddy's Reeks and

Caragh River Catchment SAC (Oct 2017) or along commuting routes within 2.5km of those roosts.

- **KA 23:** Work with relevant stakeholders to protect biodiversity within the town's environs and to ensure that future development is sensitive to Killarney's location close to the Killarney National Park, European/Natura 2000 Sites and the Kerry UNESCO Biosphere.

5.8.9. Volume 3 of the CDP includes a number of appendices with part 6 identifying the Architectural Conservation Areas. The subject appeal site lies approximately 35m to the north of Nos 1 – 10 Port Road, which are included in the Cathedral / Port Road / Saint Mary's Road ACA. Nos 1 – 10 Port Road are also included in the National Inventory of Architectural Heritage under Architectural and Artistic Categories of Special Interest.

5.8.10. Volume 6 of the CDP includes details of the Land Use Zoning in section 2. The site is zoned R2 Existing Residential where it is the stated objective of the Kerry County Development Plan 2022-2028 'to provide for residential development and protect and improve residential amenity'. Volume 6 of the CDP provides a description for such zoned lands, noting its use for existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development.

5.9. Natural Heritage Designations

5.9.1. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) and Killarney National Park SPA (Site Code: 004038) which is located, across the Port Road approximately 22m to the west of the site. The Sheheree (Ardagh) Bog – SAC (Site Code: 000832) lies approximately 3.7km to the south-east of the site. The Castlemaine Harbour – SAC (Site Code: 000343) lies approximately 4.8km to the north of the site.

5.10. EIA Screening

5.10.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.

5.10.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units
- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.10.3. The proposed development to construct a 3-storey apartment block consisting of 10 number units on a site of 0.13ha. The site is located on zoned lands within the settlement boundary of the town of Killarney. The site is located immediately adjacent to a detached residential property and in proximity to the Killarney National Park Macgillycuddy's Reeks and Caragh River Catchment SAC and the Killarney National Park SPA, and as such, might be described as ‘other parts of a built-up area’ rather than a ‘business district’. High Street and Main Street, the primary commercial area of the town of Killarney, lie within 1.1 and 1.3km of the subject site, accessed via New Road. As such, I am satisfied that the site area is substantially below the 10ha threshold for ‘other parts of a built-up area’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.10.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a

significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.10.5. Having regard to:

- (a) the nature and scale of the development,
- (b) the location of the site within the development boundaries of Tralee,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The grounds of appeal reflect those issues submitted during the PAs assessment of the proposed development and are summarised as follows:

- No objection in principle to the proposed development
- Issues relating to the protection of existing mature trees and hedgerows which are an intrinsic part of the character of the local area.
- The impact of the design of the development on the small infill site which has prioritised the provision of parking to the front of the building.

- The natural conclusion is that the proposal represents an overdevelopment of the site and the material impacts on adjoining lands cannot be discounted on the basis of plans presented.
- It is felt that the issues raised could be overcome by means of a more sensitive design including reduced scale and setting back from the development boundaries.

6.2. Planning Authority Response

None.

6.3. First Party Response to Third Party Appeal

6.3.1. The first party submitted a response to the third-party appeal via McCutcheon Halley Chartered Planning Consultants. The response is summarised as follows:

- Questions the validity of the appeal as the c/o address of the appellant is for an accountancy firm and not the appellants' address. It is submitted that the appeal does not meet the mandatory requirements for a valid planning appeal as set out in Section 127(1) of the Planning and Development Act, as amended, 2000.
- The proposed development increases the density previously permitted on the site – being 2 detached houses – which is more sustainable and appropriate, in line with national, regional and local policy.
- In relation to the issue of maintaining the local character, the applicant held pre-planning discussions with the planner with regard to design. Revisions were made to the design following the request for FI to the satisfaction of the PA.
- With regard to the issue around the retention of trees and hedgerows, it is submitted that the applicant has sought to retain as many of the mature trees on site as possible and to strengthen parts of the boundary with landscaping.

- Following the request for FI revisions were made to the site layout demonstrating how the applicant would address concerns regarding the retention of existing trees and hedgerows. The building was relocated to maintain a 2m separation from the rear boundary.
- In terms of the issue of boundary clarification, and boundary treatments, the initially proposed retaining walls are no longer needed and were omitted from the revised site layouts at FI stage.
- There was an oversight/omission in the site sections which did not include the agreed supplementary landscaping to be provided on the eastern boundary. Figure 1 (not to scale) is included in the response to the third-party appeal to provide clarification on this and confirm the applicants' intention to provide supplementary landscaping along this part of the site.
- Negotiations with the adjoining landowner to the south has agreed that planting along the southern boundary is not necessary and was omitted from the revised site layout.

The response submits that the proposed development will make a positive contribution to the local area, and it is requested that the Board uphold the decision of the Council to grant permission.

6.4. **Observations**

None

7.0 Planning Assessment

7.1. Introduction

7.1.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Compliance with National Guidelines & Standards
3. Density
4. Layout & Design, Unit Mix & Typology
5. Visual Impacts and Residential Amenity
6. Other Issues

7.2. Principle of the development

7.2.1. The proposed development originally sought the construction of an apartment development comprising 12 units within a three-storey building. This was reduced to 10 units following a request for further information by the Planning Authority. The development permitted by Kerry County Council provided for all 2 bed units, including both 3 and 4 person units, and all of which include private amenity spaces in the form of terraces and balconies, as well as internal storage spaces. The scheme also proposes 12 on-site car parking spaces, one of which will be an accessible space, as well as a bicycle parking stand. Communal bin storage is proposed to be located to the north of the site, adjacent to the parking area.

7.2.2. This area of Killarney is primarily residential in character and the site overlooks the boundary of the Killarney National Park, which lies to the west of Port Road. The site

lies within 1.1- 1.3km of the town centre and lies adjacent to existing low density residential, including two detached houses on large sites, one to the north and one to the south of the site. The subject appeal site also lies approximately 35m to the north of Nos 1 – 10 Port Road, which are included in the Cathedral / Port Road / Saint Mary's Road ACA.

- 7.2.3. The Board will note that the site is located within the settlement boundaries of the town of Killarney on lands zoned R2 Existing Residential where it is the stated objective of the Kerry County Development Plan 2022-2028 for such zoning 'to provide for residential development and protect and improve residential amenity'. Volume 6 of the CDP provides the following description for such zoned lands:

For existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development. 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.

- 7.2.4. In terms of the above and having regard to the location of the subject site, on serviced lands, zoned for development purposes, which include residential use, together with the proximity to public transport, retail, community and social facilities, it is reasonable to conclude that in principle, the development of the site for residential purposes is acceptable. The principle, however, is subject to all other planning considerations including issues relating to roads and traffic, visual and residential amenities, water services and other considerations which I will address further below.

7.3. **Compliance with National Guidelines & Standards:**

- 7.3.1. Having regard to the location of the subject site within the settlement boundary of the town of Killarney and within 1.3km of the town centre, together with the zoning

objective afford to the site, I am generally satisfied that the principle of a residential development can be considered acceptable and in accordance with the general thrust of national policy. The subject site has a stated area of 0.13ha and proposes to provide 10 residential units on the site, following the amendment to the scheme as part of the response to the further information request, 100% of which are two bed units

- 7.3.2. The objective of the Sustainable Residential Development in Urban Areas 2009 Guidelines, and its companion design manual, is to produce high quality, and crucially, sustainable developments and communities through the reduction, as far as possible, of the need to travel, particularly by private car, and promoting the efficient use of land. The Guidelines, together with the companion design manual, sets out a series of 12 criteria which should be employed in the assessment of planning applications and appeals.
- 7.3.3. The Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities suggest that in areas within outer suburbs / greenfield sites associated with cities and large towns, minimum densities of 35-50 units per hectare should be applied subject to a number of safeguards. The density in the amended proposed development is approximately 76.9 units per hectare, down from the originally proposed 92.3 units per hectare.
- 7.3.4. In terms of compliance with the local policy requirements, the Board will note that the Killarney Town Development Plan 2009-2015 (as extended & varied) makes no specific references to residential densities, rather requires that the appropriate density for applications be considered by the PA on a case-by-case basis and will be based on the density of the surrounding development and proximity to the town centre. The Plan further states that the quality of the design of the scheme will also heavily influence the decision. In principle, I have no objection to the density proposed, but have concerns regarding the potential impact of the scheme on the existing character of the area and existing residential amenities, which I will discuss further below in this report.

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7.3.5. The 2018 guidelines updated the guidelines from 2015 in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply, the Government's action programme on housing and homelessness, Rebuilding Ireland and Project Ireland 2040 and the National Planning Framework, published since the 2015 guidelines, and specific policy objectives contained in these guidelines take precedence over policies and objectives of development plans. The 2020 Guidelines update the 2018 Guidelines, and in terms of the subject appeal, are the appropriate guidelines.

7.3.6. In terms of the location of the subject site, Chapter 2 of the Guidelines seek to identify the types of location in cities and towns that may be suitable for apartment development. As the subject site lies within 1.5km of the centre of Killarney, it is identified as being located in a Central and / or Accessible Urban Location. Such locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, including:

- Sites within walking distance (i.e. up to 15 minutes or 1,000-1,500m), of principal city centres, or significant employment locations, that may include hospitals and third level institutions;

7.3.7. Chapter 3 of the Guidelines provide for Apartment Design Standards, and I proposed to consider the proposed development against these requirements as follows:

a) *Apartment floor area:*

The Guidelines, Specific Planning Policy Requirement 3, require that the minimum floor areas be applied to apartment developments. The Board will note that there are 7 no. unit types proposed within the scheme, with 10 x 2-bedroom apartments - 5 x Two bedroom (3 persons) and 5 x Two bedrooms (4 persons). All apartments proposed achieve the minimum floor area required by the guidelines.

The Board will also note that all units achieve the guideline requirements with regard to minimum aggregate floor areas for living/dining/kitchen rooms and room widths.

b) Safeguarding Higher Standards

It is a requirement that 'the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total but are not calculable as units that exceed the minimum by at least 10%)'.

Having regard to the floor areas of the units proposed, the Board will note that all five of the two bed (3 persons) units exceed the minimum floor area of 63m² by 10% while 3 of the five two-bedroom (4 persons) units also exceed the 73m² by 10%. As such, the scheme complies with the 2020 Apartment Guideline requirements.

c) Dual aspect ratios:

This issue relates to the availability of daylighting and orientation of living spaces in order to maximise the amenity of occupants of the apartments. The proposed development provides for 10 apartments in a single block which will rise to 3 storeys. Of the proposed 10 units, 4 are noted as having a dual aspect. The centrally located units, of which there are six, are single aspect in the context of the kitchen/dining/living space, and all have a western aspect.

The Guidelines require, SPPR 4 refers, that at least 33% of units are dual aspect and, in this regard, the proposed development complies with the 2020 Apartment Guidelines with 40% of the 10 units proposed being dual aspect. All apartments are afforded private amenity spaces in the form of small balconies which meet the recommended 1.5m minimum depth required in the Guidelines. Overall, I am generally satisfied that this is acceptable.

d) *Floor to Ceiling Height:*

It is a specific policy requirement, SPPR 5, that ground level apartment floor to ceiling heights shall be a minimum of 2.7m, and 3m should be considered for multi-storey buildings. The sections submitted with the planning documents and appeal indicate that a floor to ceiling height of 2.6m at ground and first floor levels, and 2.4m across the upper floor.

While the proposed development may not achieve the above requirements, the Board will note that the Guidelines advise that the requirements may be relaxed on a case-by-case basis on 'urban infill schemes on sites up to 0.25ha'. The subject site does not, in my opinion, come under this provision for relaxation and as such, the proposed scheme does not appear to comply with the stated guidance.

e) *Lift & Stair Cores:*

The proposed development includes two stair cores within the building. No lift area is proposed to serve the development.

f) *Internal Storage:*

The proposed development provides for storage within all apartments. Minimum storage requirements are indicated in the guidelines, and it is noted that said storage 'should be additional to kitchen presses and bedroom furniture but may be provided in these rooms. A hot press or boiler space will not count as general storage and no individual storage room within an apartment shall exceed 3.5m².' The Guidelines also advise that storage for bulky items outside the individual units should also be provided, apart from bicycle parking requirements. The minimum storage space requirements are 5m² for two bedrooms (3 person) and 6m² for two bedrooms (4 person) units.

In the context of the proposed development, the Board will note that the submitted drawings indicate that storage is provided within each apartment, generally in accordance with the above requirements. However, I would note that the two proposed apartments at second floor level provide for storage

spaces of 5m² in one room. Section 3.31 of the 2020 Guidelines state that ‘as a rule, no individual storage room within an apartment should exceed 3.5 square metres.’ As such, this element of the proposed scheme does not accord with the requirements of the guidelines.

g) Private Amenity Space:

It is a specific planning policy requirement that private amenity space shall be provided in the form of gardens or patios/terraces for ground floor apartments and balconies at upper levels. The guidelines require 6m² for two bedrooms (3 person) and 7m² for two bedrooms (4 person) units.

All apartments are provided with balconies or terraces, all of which appear to achieve the recommended area and 1.5m minimum depth required in the Guidelines. All private open spaces adjoin and have a functional relationship with the main living areas of the apartments and primarily have a western aspect. The private open space provision for each unit accords with the requirements of the guidelines.

h) Security Considerations

The Guidelines require that apartment design should provide occupants and their visitors with a sense of safety and security by maximising natural surveillance of streets, open spaces, play areas and any surface bicycle or car parking. Entrance points should be clearly indicated, well lit, and overlooked by adjoining dwellings. Particular attention should be given to the security of ground floor apartments and access to internal and external communal areas.

The Board will note that the scheme proposes 2 entrances to the apartment building facing to the front of the building (western elevation), each of which will serve 4 units, 1 each at ground floor level, 2 at first floor level and 1 at second floor level. Two ground floor units will have their own door access, one each on the southern and northern elevations.

While I have no objection in principle to the proposed access arrangements for the scheme, I would have concerns regarding the access to the ground floor units with their own doors due to the location of the building on the site and the proximity of the building to the site boundaries. In particular, the northern boundary comprises a number of mature trees and hedges which may not be within the gift of the applicant to remove. I would consider it inappropriate to remove the mature trees in this area in any case. I note that proposals for landscaping along the southern boundary have been omitted following discussions with the adjacent landowner. In this regard, I will address potential residential amenity issues further in this report.

- 7.3.8. Chapter 4 of the Guidelines seeks to deal with communal facilities in apartments and deals with access & services, communal facilities and refuse storage as well as communal amenity space, children's play, bicycle parking and storage and car parking.
- 7.3.9. In terms of the provision of refuse storage, the Board will note that a bin storage area to service the apartments is proposed to the north of the site with access from the car park, and to the front of the apartment building. The refuse area proposes 10 x 2 wheelie bin stores suggesting a store per apartment unit. I would note that there is adequate space within the site for a bin truck to enter and collect the bins without any undue impact to other public road users. The level of impact associated with the proposed development in this regard is considered minimal and acceptable.
- 7.3.10. In relation to communal amenity spaces, the development proposes 2 landscaped areas, 1 to the west (front) of the building and an area to the east (rear) of proposed building. In the context of the proposed development, I would note that the initial design statement submitted with the application advises that the public open space area proposed within the scheme occupies the 15% of the site area as required in the Kilkenny TDP. No specific figures are provided, and I would have serious concerns regarding the quality and area of the open space proposed. It would not, in my opinion, amount to 15% of the site area as suggested and comprises primarily a small-grassed patch of approximately 50m² to the front of the building. The original

layout also proposed a narrow strip of open space to the rear of the building with a depth of between 1-2m. This is not acceptable in my opinion.

- 7.3.11. In terms of the amended proposal, the applicant advises that the revised site layout provides for a communal amenity space of 260m² can be provided. This area is to be provided to the front and rear of the proposed building. While I am generally satisfied that the proposed development is acceptable in terms of the quantity of communal amenity space, I would advise concern in terms of the position of the building within the site and the potential impact on the existing mature trees and hedgerows which are located on the site boundaries, and outside the boundary of the subject site, in particular to the north and east. I am not satisfied that the matter of the protection of trees, both on and adjacent to the subject site, has been adequately addressed.
- 7.3.12. The Board will note that 12 car parking spaces are to be provided within the proposed development, including 1 accessible space. The Guidelines promote the location of apartments which have access to public transport and other sustainable transport modes. Where it is appropriate to reduce car parking provisions, high quality cycle parking and storage facilities should be provided. The guidelines require that 1 cycle storage space per bedroom is applied. The proposed development therefore requires 20 bicycle parking spaces for residents. In addition, there is a requirement for 5 visitor bicycle parking spaces to serve the development. The Guidelines require that the design of such cycle storage..... 'so that cyclists feel personally safe – secure cage/compound facilities, with electronic access for cyclists and CCTV, afford an increased level of security for residents.' It is therefore required that development proposals incorporate details on the provision of and access to cycle storage facilities at planning application stage.
- 7.3.13. The Board will note that the initial design statement references bicycle storage, but no real detail as to the provision is provided. The amended plans indicate only that a bicycle stand will be provided adjacent to the front of the building. No details regarding the stand, including the size / number of spaces is provided and it would appear that this space is not secured. I am not satisfied that the development adequately provides for bicycle parking.

7.3.14. In terms of car parking, the Guidelines notes that the quantum or requirement for car parking will vary in terms of the location of the site. Section 4.19 suggest that the car parking provision can be minimised, substantially reduced, or wholly eliminated in certain circumstances. Such policies are applicable in highly accessible areas in or adjoining city cores or at a confluence of public transport systems. In addition, the Board will note the provisions of Section 4.27 of the Guidelines which relate to urban infill schemes on sites of up to 0.25ha, noting that car parking provision may be relaxed in part or whole, on a case-by-case basis. Where it is sought to eliminate or reduce car parking provision, it is necessary to ensure the provision of an appropriate drop off, service, visitor parking and parking for the mobility impaired. I would note that the guidelines clearly suggest that these locations are central and/or accessible urban locations which are 'most likely to be in cities, especially in or adjacent to city centres or centrally located employment locations.' The subject site is considered to be located within a central and/or accessible urban location.

7.3.15. Having regard to the proximity of the site to existing paid public parking (to the north of the subject site), together with its location within walking distance to the town centre, I am satisfied that the site is an appropriate and accessible location for the proposed residential development, with the potential for a reduced car parking provision. In the context of the information presented, I am not satisfied that the development is appropriate in that it is car dominated and offers little in the way of secure bicycle parking facilities or pedestrian priority. The proposed car parking heavy / vehicle priority layout, I am not satisfied that this approach is in accordance with the national guidelines.

Conclusion:

7.3.16. In terms of the principle of the proposed development, I am generally satisfied that the residential development is acceptable in terms of compliance with the local policy context. However, I am not satisfied that the proposed development complies with the general thrust of the Sustainable Urban Housing: Design Standards for New Apartments, DoHPLG December 2018, as they relate to the following:

- Floor to ceiling heights of ground floor.

- Internal storage rooms in Apartments 9 & 10.
- Access to Apartments 1 & 4.
- Inadequate details in terms of bicycle parking and storage.

7.4. Density:

- 7.4.1. The subject site is located approximately 1.1-1.3km to the north-west of the town centre on lands zoned R2 Existing Residential. The site comprises a narrow infill site which lies between two detached houses and an access to the lands to the rear of the site. In terms of density, the Kerry County Development Plan 2022 does not stipulate, rather recognises the benefits of increasing the density of residential development at appropriate locations. The Plan further notes that while there may be instances where specified densities cannot be achieved due to specific circumstances such as site constraints; however, all developments should strive to achieve the prescribed density to support the delivery of more compact development and to ensure a maximum return on investment in social and physical infrastructure.
- 7.4.2. The development before the Board proposes 10 residential units on a site covering 0.13ha which would result in a density of 77 (76.9) units/ha. In the context of the location of the subject site, which is located outside of the town centre zoned lands, the existing development in the vicinity is low density housing including large-detached houses on large sites as well as the Port Cottages, protected structures. In terms of the above, I am satisfied that a higher-density development than that currently existing in the immediate vicinity can be accommodated on the subject site and is supported by the local policy context.
- 7.4.3. The site is considered to be located within an inner suburban / infill site, as detailed in Section 5.9 of the Sustainable Residential development in Urban Areas Guidelines for Planning Authorities (2009). In this context, the guidelines advise that 'In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.' While I have no objection in principle to the

proposed design or height of the proposed apartment building, I have a real concern regarding its scale in the context of the narrow nature of the subject site. The proposed building will occupy essentially the full width of the site and has not, in my opinion, had full regard to the existing mature trees on and adjacent to the boundaries, or the potential impact on existing residential amenity. As such, consider that the proposed density of 77 units/ha to be unacceptable at this location within the town of Killarney.

7.5. Layout & Design, Unit Mix & Typology:

- 7.5.1. The proposed building will rise to approximately 10.4m in height over ground level, while the existing detached houses to the north and south rise to approximately 8m in height. I have no objection in principle to the overall height of the building proposed. The proposed development provides for the construction of a single apartment block which will be set back towards the rear of the site (east) with parking proposed to the front onto Port Road. Communal amenity spaces are proposed at two locations, including to the front and to the rear of the building. While I would acknowledge the somewhat restricted nature of the communal open spaces proposed, in particular with regard to active recreation, I would note that the site lies proximate to other areas of open space including the Killarney National Park. That said, I do not consider that the site layout as presented is particularly pedestrian friendly.
- 7.5.2. Chapter 5 of the Sustainable Residential Development in Urban Areas, 2009 deals with Cities and Larger Towns, and sets out the design safeguards to ensure the provision of high-quality residential environments and the efficient use of serviced lands. Detailed advice on the criteria to be considered in the design and assessment of higher density residential development is provided in the Department's companion design manual to the guidelines and include the following:
- acceptable building heights;
 - avoidance of overlooking and overshadowing;

- provision of adequate private and public open space, including landscaping where appropriate and safe play spaces;
- adequate internal space standards in apartments;
- suitable parking provision close to dwellings; and
- provision of ancillary facilities, including childcare.

7.5.3. In the context of the above, I do not consider that the development is of a scale which requires the provision of childcare facilities. I have previously raised concerns regarding elements of the apartments, both internally in terms of floor to ceiling height and storage spaces and externally in terms of access to units 1 and 4 and bicycle parking and storage provision. I note the pallet of materials to be employed at the site and I have no objections in principle to the overall proposed scheme. However, I remain concerned that the scale, bulk and in particular, the location of the building on the site in proximity to the site boundaries, would be out of character with the existing residential properties in the vicinity and would seriously injure the residential and visual amenities of the area.

7.5.4. In addition to the above, I consider the siting of the building on the site minimises the availability of public open space and would not be conducive to pedestrian and cyclist safety and would constitute a substandard form of development. The Board will note that the applicant was advised regarding the need to protect the existing mature trees and was invited to amend the layout to ensure same. While the building was relocated approximately 1m, I do not consider this to be sufficient in the absence of a detailed assessment and would note that even at a 2m distance from the site boundaries, the building would impact on the crown and root system of the trees.

7.5.5. In terms of unit mix and typology, the development, as permitted, proposes apartments only as follows:

Unit Type	Proposed	% Of Units
2 bed (3 person)	5	50
2 bed (4 person)	5	50
Total	10	100

The

Board

will note that the proposed development seeks to construct only one type of residential unit, all being 2 bed roomed apartments. I also note the existing residential development in the immediate vicinity of the subject site includes a range of house types including detached, semi-detached houses and terraced houses.

- 7.5.6. Given the location of the subject site in close proximity to the town centre and associated amenities, I am satisfied that the nature of the proposed development presents an appropriate residential form to serve the needs of the wider community in terms of housing mix and typologies. I further note the provisions of the 2018 Urban Development and Building Height Guidelines for Planning Authorities in addressing the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation.
- 7.5.7. The Kerry County Development Plan 2022 also advises that ‘all apartment schemes should provide for a mix of units; comprising of one bedroom, two bedroom and family units.’ In addition to the above however, I note that the Housing Strategy for Kerry identifies that 1 and 2 bedroom apartments as the primary need in the County with 278 1-bed and 107 2-bed units needed in Killarney at the time of writing the Housing Strategy.
- 7.5.8. I am satisfied that apartments are an appropriate form of housing which can contribute to addressing the existing housing shortage in the country and can appropriately increase residential density on suitably zoned and serviced lands. However, in the context of my concerns relating to the proposed building as discussed above, I consider that amendments could be made to the scheme which would improve the unit mix, and provide 1-bed units, while increasing the separation

distance between the proposed building and the site boundaries and which would better align with both national and local policy.

7.6. Visual Impacts & Residential Amenity

- 7.6.1. The Urban Development and Building Height Guidelines for Planning Authorities (Dec 2018), builds on the wider national policy objective to provide more compact forms of urban development as outlined in the National Planning Framework. Increased building heights is identified as having a critical role in addressing the delivery of more compact growth in urban areas, particularly cities and larger towns. Specific Planning Policy Requirements (SPPRs) of the height guidelines take precedence over any conflicting policies, and objectives of the Kerry County Development Plan and as it relates to the town of Killarney.
- 7.6.2. In support of the proposed development, the applicant submitted contextual elevations and a number of photomontages as part of the design assessment, to depict the development as proposed. In principle I have no objection to the overall design approach to the proposed development, and I have no objection to the finishes proposed or the overall height of the building. However, I consider that the proposed width of the development does not provide an appropriate transition in scale and with regard to the proximity to the site boundaries and the potential impact on the mature trees and hedgerows which lie immediately adjacent.

Overlooking

- 7.6.3. The Board will note that landscaping proposals along the southern boundary of the site were altered following the submission of the response to the FI request. The planting adjacent to the proposed building has been omitted and this has resulted in a high potential for overlooking into the private rear garden space of the house to the south. Given the nominal separation distance of less than 2m, I would have concerns in terms of the impact on the existing residential amenities of the house. Should the Board be minded to grant planning permission in this instance, full details of the proposed boundary treatment, including planting, should be submitted for the written agreement of the Planning Authority.

Daylight/Sunlight/Overshadowing

- 7.6.4. Section 3.2 of the Urban Development and Building Height Guidelines (2018), in terms of the at scale of the site/building, deals with matters relating to daylight. The applicant has not submitted any shadow impact assessment to assess this issue. In terms of impact on existing houses however, I would accept that there is likely to be very little impact in terms of shadowing due to the orientation of the site and the location of the existing houses.
- 7.6.5. With regard to the potential for shadowing into the proposed units, the Board will note that the rear of the site rises with the land to the east of the subject site rising further. Given the proposed proximity of the building to the rear boundary of the site, together with the presence of mature trees and hedgerows, I would have concerns that the amenity value of the proposed rooms in this area may be limited. However, I do acknowledge that the affected rooms are bedrooms which will look onto a small area of amenity spaces, which will likely be in shadow for much of the day.
- 7.6.6. Should the Board be so minded to grant permission for the development, the applicant should be requested to submit a shadow analysis of this area of the site including the amenity space and the bedrooms, in accordance with the BRE guidance document.

7.7. Other Issues

7.7.1. Roads & Traffic Issues

In terms of roads and traffic issues, I note that the Killarney MD Area Engineer raised no concerns in relation to the proposed development, and recommended conditions be included in any grant of planning permission. While I acknowledge that the site fronts onto a Regional Road, with a solid white line in the centre, it is located within the urban speed limit, and on suitably zoned lands.

The Board will note that I have raised concerns in terms of the inadequate, and unclear, provision of bicycle parking to serve the development. In addition, I have

concerns in terms of the layout of the site which I consider gives priority to vehicles above more vulnerable road users.

7.7.2. **Water Services & Flooding**

The applicant did not submit clear details regarding the proposals for connections to the public water networks in Killarney. I note that Irish Water has raised no objections to the proposed development subject to compliance with conditions. Details of proposed management of surface waters from the site are also lacking.

While there would appear to be no objection in principle to the proposed development from a Water Services view point, should the Board be minded to grant permission for the development, a full Water Services Design Statement should be submitted for approval by the PA. This report should also include full details of all proposed SuDs measures to be employed to address surface water management within the site.

In terms of flooding, I would note that there is no historical data which suggests that the subject site has been subject to flooding in the past. I note that the Deenagh River which lies to the west of the subject site has had minor incidents, but it would appear that no such events have given rise to flooding of the public road which separates the River and the subject site. I am generally satisfied that the development, if permitted, will not exacerbate or add to flooding risk in the area.

7.7.3. **Part V**

The proposed development seeks to construct 10 residential units on a site covering 0.13ha on a serviced site in the town of Killarney, Co. Kerry. The development will connect to public services. The development is subject to requirements of Part V of the Planning and Development Act 2000, as amended and the Board will note that the applicant appears to have contacted the PA in this regard. A condition relating to Part V should be included in any grant of planning permission.

7.7.4. **Development Contribution**

The subject development is liable to pay development contribution, and a condition to this effect should be included in any grant of planning permission.

8.0 **Appropriate Assessment**

8.1. **Introduction:**

- 8.1.1. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) and Killarney National Park SPA (Site Code: 004038) which is located, across the Port Road approximately 22m to the west of the site. The Sheheree (Ardagh) Bog – SAC (Site Code: 000832) lies approximately 3.7km to the south-east of the site. The Castlemaine Harbour – SAC (Site Code: 000343) lies approximately 4.8km to the north of the site. There are no other Natura 2000 sites noted within 15km of the site.
- 8.1.2. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.3. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.

8.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

8.2. AA Screening Report

- 8.2.1. The application was not initially accompanied by an Appropriate Assessment Screening Report, with an AA Screening Report, dated 5th May 202 and prepared by Greenleaf Ecology, submitted following a request for further information. This report assesses whether effects to the Natura 2000 network are likely to occur as a result of the project. The report sets out the methodology employed and provides a description of the project proposed as well as including a description of the existing habitats present on the site. The report also identifies other projects / plans / activities in the area.
- 8.2.2. The AA Screening Report submits that the zone of influence extends to 5km from the boundary of the development. The report identifies the relevant Natura 2000 sites within the identified zone of influence as those described above in Section 8.1.1 of this report. The Report presents details of the relevant Natura 2000 sites, including details of the qualifying interests and conservation objectives. Section 4 of the report presents the assessment criteria and identifies potential direct, indirect or secondary impacts while an assessment of Potential Significant Impacts is presented in Table 4-2 (Section 4.4) of the submitted AA Screening document, page 21.
- 8.2.3. The Stage 1 Screening concludes that there are no likely changes to the European Sites identified as a result of the proposed development. Ultimately, the submitted

AA Screening Report concludes that a Stage 2 Appropriate Assessment is not required.

8.3. Consultations

- 8.3.1. With regard to consultations, the Board will note that no third-party concerns were raised with the Planning Authority with regard to AA. The Councils Biodiversity Officer also considered the content of the submitted AA Screening Report and concluded that AA is not required.

8.4. Screening for Appropriate Assessment

- 8.4.1. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:
- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
 - b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.
- 8.4.2. The applicant prepared an Appropriate Assessment Screening Report in support of the subject application following a request for further information. The closest Natura 2000 site is the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) and Killarney National Park SPA (Site Code: 004038) which is located, across the Port Road approximately 22m to the west of the site. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site.
- 8.4.3. Having regard to the information available, I have serious reservations that a comprehensive consideration of potential impacts on the closest European Site has been undertaken. While I acknowledge that the site is not located within the boundaries of the adjacent SAC or SPA, and that there is no apparent direct hydrological or ecological connection to the SAC, I have reservations regarding the

robustness of the Screening Report submitted. In this instance, I note the decision of the Board with regard to a SHD development to the immediate east of the current site in August 2022.

- 8.4.4. A QI of the Killarney National Park, MacGillycuddys Reeks and Caragh River Catchment - SAC (Site Code: 000356) is *Rhinolophus hipposideros* (Lesser Horseshoe Bat). There is no particular reference to this species in the submitted assessment notwithstanding the fact that the subject site lies within the foraging range of the Lesser Horseshoe Bat. In addition, I note that a roost for this species is mapped approximately 600m to the south of the subject site. The boundaries of the subject site include a mix of mature trees and hedgerows and while I would accept that the site does not lie within the SAC, no assessment of the potential for the species to use the trees and hedgerows in and adjacent to the subject site has been undertaken. This is a particular concern in the context of the potential impact of the proposed apartment building on the mature trees located adjacent to the site boundaries. The applicant submits that these trees will be retained 'where possible' and I do not consider this to be acceptable in the context of AA. In addition, the Board will note that the bats are susceptible to disturbance due to artificial light.
- 8.4.5. In the absence of any bat survey, and lack of real clarity on the retention of mature trees and hedgerows in the submitted planning application details, I cannot concur with the conclusion of the applicants AA Screening Report. Notwithstanding the zoning afforded to the subject site, or the fact that the development will connect to public services and is not located within any designated site, I am not satisfied that the proposed development can be justified or that the potential impact on bats has been adequately considered or addressed.

8.5. In Combination / Cumulative Effects

- 8.5.1. Given the nature of the proposed development, being the construction of a residential scheme, which will connect to public services in the town of Killarney, I consider that any potential for in-combination effects on water quality in the associated Natura 2000 sites can be excluded. In addition, I would note that all other

projects within the wider area which may influence conditions in European Sites are also subject to AA.

- 8.5.2. With regard to the in combination / cumulative effects on QI species associated with the adjacent SAC, I have advised my concerns above. Such impacts cannot be excluded based on the information presented to date.

8.6. **Conclusion on Stage 1 Screening:**

I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. I cannot reasonably conclude that on the basis of the information available, the proposed development, either individually or in combination with other plans or projects, would not adversely affect the integrity of the Killarney National Park, Macgillycuddy's Reeks and Caragh River SAC (Site Code: 000356), in view of the site's Conservation Objectives, with particular reference to the Lesser Horseshoe Bat.

- 8.6.1. The Board, therefore, cannot be satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of the Killarney National Park, Macgillycuddy's Reeks and Caragh River SAC (Site Code: 000356), in view of the site's conservation objectives and qualifying interests. The Board is, therefore, precluded from granting planning permission for the proposed development.

9.0 **Recommendation**

I recommend that permission for the proposed development be refused for the following stated reason.

10.0 Reasons and Considerations

1. Having regard to the proximity of the subject site to the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment candidate Special Area of Conservation (cSAC) (Site Code no. 000365) it is considered that:

- the proposed development may result in increased artificial lighting generated at both the construction and operational phases of the development and that may impact on Lesser Horseshoe Bats that commute along routes to the west of the Port Road/ Deenagh River,
And
- the proposed development has not had adequate consideration on the protection and retention of mature trees and hedgerows on and adjacent to the site boundaries which may support foraging bats,

The submitted Appropriate Assessment Screening does not provide sufficient scientific reasoning to clearly eliminate the likelihood of significant adverse effects.

In view of the site's conservation objectives and qualifying interests, the applicant has failed through the submitted Appropriate Assessment Screening to demonstrate that the proposed development would not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

2. Having regard to its location at the edge of the town of Killarney, it is considered that the proposed development would be out of character with the pattern of development in the area and would result in the poor disposition and quantity of public and private/communal open space and a road layout which would not be conducive to pedestrian safety. It is considered that, by reason of the design, bulk, footprint and, in particular, the location of the building within the site and its potential impact on the established mature trees

and hedgerows along the northern and eastern boundaries, the proposed development would militate against an attractive pedestrian environment.

Elements of the scheme fail to accord with the minimum requirements of the Sustainable Urban Housing Guidelines: Design Standards for New Apartments, DoHPLG, December 2020 as they relate to floor to ceiling heights, internal storage room areas, quality of communal open space and potential impact on mature trees, bicycle parking and storage and access.

The proposed development would thereby constitute a substandard form of development which would seriously injure the visual and residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
25th January 2023