



An
Bord
Pleanála

Inspector's Report

ABP-316218-23

Development	Construct a new boundary wall
Location	Countess Shopping Centre, Park Road, Killarney, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/686
Applicant(s)	David O'Hegarty.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Michael Hegarty.
Observer(s)	None.
Date of Site Inspection	29.07.2023.
Inspector	Fiona Fair

1.0 Site Location and Description

- 1.1. The subject appeal site is located along the roadside edge with the junction of Countess Road Shopping Centre and Countess Road and Park Road, Killarney County Kerry. Countess Road Shopping Centre has a mix of retail and other uses.
- 1.2. Park Road runs directly to the north of the shopping centre and Countess Road runs to the east. There is a small roundabout at the junction of both roads to the northeast of the shopping centre. Currently intermittent boundaries exist with street furniture incl. planting, low walls, lighting poles and directional signs present. The entrances into and out of the shopping centre are wide and undefined.

2.0 Proposed Development

- 2.1. Planning permission is sought to construct a new boundary wall.

3.0 Planning Authority Decision

3.1. Decision

Subject to further information being sought with respect to compliance with DMURS (footpath width) and cognisance and regard to be had to a Part 8 for cycle lanes at the junction, planning permission was Granted subject to 6 number conditions, those of note include:

C2. Any damage to the adjoining public footpath / roadway to be made good at the developer's expense.

C3. Appropriate measures shall be installed at construction stage to prevent construction vehicle and plant from depositing debris and dirt on the public road.

C4. All works adjacent to or on the road shall acquire a road opening licence.

C5. The area between the proposed wall and the existing kerb shall be finished in 75mm macadam.

C6. The height of the proposed wall shall be more than 900mm high from the existing footpath level. The wall shall be finished in natural stone. The stone shall be

generally in keeping with the stone facing on the roadside boundaries on the opposite side of Park Road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- All of the issues raised in the request for further information have been addressed in particulars received on 20/02/2023. The Roads Engineer has no objection to the further information received.
- The application proposes to demolish the existing sections of wall along the roadside boundary with the roundabout with Park Road and Countess Road. It is currently possible to drive through the car park to the front of the Careplus pharmacy onto the roundabout. This use of this gap / entrance interferes with the flow of traffic on the ground about and is not ideal from a Traffic Safety point of view. The sections of wall currently in place are brick built with some planting inside. A Part 8 has been completed for the provision of cycleways along Park Road.

3.2.2. Other Technical Reports

Roads Engineering – No objection subject to conditions (following FI request and meeting with applicants - report dated 14th March 2023)

3.3. Prescribed Bodies

IW: No objection

3.4. Third Party Observations

One number third party observation was submitted it is summarised as follows:

- Application is invalid as it fails to show all lands that are in the ownership of the applicant.
- The appellant has rights of way over the entire area and in particular he has a right of way over the ground on which the proposed wall is to be built.

- This is a registered ROW
- The applicant does not indicate what the new boundary wall is to consist of.
- The application is misleading and confusing – unclear markings on the site layout plan.

4.0 **Planning History**

There have been numerous applications associated with the Shopping centre and surrounding built up area. None of direct relevance.

5.0 **Policy Context**

5.1. **Development Plan**

Killarney Town Council Development Plan (County Development Plan 2022 – 2028) is the pertinent statutory Plan. The subject site is located with an area zoned 'built up area' in the Town Council Development Plan.

5.2. **Natural Heritage Designations**

None Relevant.

5.3. **EIA Screening**

Having regard to the nature of the proposed development comprising of construction of a wall, in an established urban area, 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. A third party Appeal has been submitted by Pdraig Murphy on behalf of Michael Hegarty, who owns (an unidentified) adjoining property, it is summarised as follows:

- The third party has a right of way around the entire forecourt of this commercial premises. He has had the benefit of the car park and he has a ROW access on and off incl. an access directly off the roundabout for many years and he is entitled to retain same.
- A copy of a screenshot of landdirect.ie is enclosed.
- The application does not comply with Part 4 of the Planning and Development Regulations 2001, in that it failed to show the lands in the control of the applicant.
- The applicant has not indicated what the wall is to consist of.
- There appears to be no opening left in the wall for the entire perimeter – therefore the appellant is losing the benefit of 3 no. entrances

6.2. Applicant Response

- None received.

6.3. Planning Authority Response

- None received.

6.4. Observations

- None received.

6.5. Further Responses

Not applicable.

7.0 Assessment

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Proposed Development & Traffic Safety**
- **Third Party Right of Way (RoW)**
- **Validity of the Application**
- **Appropriate Assessment (AA)**

7.2. Principle of the Proposed Development & Traffic Safety

- 7.2.1. The subject site is located with an area zoned 'built up area' in the Killarney Town Council Development Plan (forms part of the Kerry County Development Plan 2022 – 2028) which is the pertinent statutory Plan.
- 7.2.2. From my site visit it is clear that this junction at the Countess Shopping Centre is busy from a traffic perspective and cars can enter and exit the shopping centre in a haphazard manner. While I agree with the third party that there is limited information on the file, it is clear from the further information submitted, in particular Drawing No. 22-057-05, 'Proposed site layout plan', that it is proposed to demolish existing section of a low wall and planter wall and to construct a new wall. I note that discussions have taken place with Kerry County Council Operations, Health and Safety section (Town Engineer) and that the proposal was revised to increase the width of footpaths to 2.6m (DMURS compliant) and to have regard to the completed Part 8 to accommodate cycleways along Park Road.
- 7.2.3. It is remiss I feel that the length of the wall to be constructed is not clearly indicated on the revised plan submitted by way of FI. However, from the proposed site layout plan Drawing No. 22-057-05, it appears that the wall is to be constructed for its entirety within the red line boundary. I note that the grey line indicating the 'proposed wall location' extends outside of the red line site boundary. This I consider can be dealt with by way of condition and compliance should the Board consider that planning permission should be forthcoming.
- 7.2.4. Overall, the application is light on detail, however, the principle of seeking to regulate traffic flow at this junction should be welcomed, from a traffic safety point of view, in

particular for pedestrians. I note the report of the Roads Engineer dated 14th March 2023. Issues raised in further information have been addressed and the roads engineer has no objection to the proposal. I recommend that permission be granted for the portion of the wall within the red line boundary of the application subject to conditions attached.

7.3. Third Party Right of Way (RoW)

- 7.3.1. The third party submits that he has a right of way access around the entire forecourt of this commercial premises. He has had the benefit of the car park and he has a ROW access on and off incl. an access directly off the roundabout for many years and he is entitled to retain same.
- 7.3.2. I note the copy of a screenshot of landdirect.ie enclosed with the appeal. The address or abode of the third party is not indicated. It is stated in the objection and appeal that the appellant Michael Hegarty owns the adjoining property, however the address is not stated or indicated on the RoW plan submitted.
- 7.3.3. The use of the forecourt, entrances and exits by the third party is a civil and legal matter. I consider that the applicant has demonstrated sufficient proof of ownership over the lands, subject to this application, for the purposes of seeking and obtaining planning permission. Having regard to section 34(13) of the Planning and Development Act 2000 (as amended) a person is not entitled solely by reason of a permission under this section to carry out any development. Any grant of planning permission does not relieve the developer of the responsibility of complying with any requirements under other codes of legislation affecting the proposal or the site.
- 7.4. Overall, I see no reason to refuse permission on grounds of infringement upon Right of Way.
- 7.5. I recommend that permission should be forthcoming subject to the conditions.

7.6. Validity of the Application

- 7.6.1. The Third Party has raised an administrative matter with respect to compliance with Part 4 of the Planning and Development Regulations 2001, in that the application fails to show all of the lands within the control of the applicant.
- 7.6.2. As noted above the application is light on detail, however this is an administrative matter, the planning application was validated by Kerry County Council. I do not consider the matter of lands within the control of the applicant to be so vague or misleading as to invalidate the application.

7.7. Appropriate Assessment

- 7.7.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the nature of the proposal and location of the site it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would be acceptable from a visual amenity perspective and from a traffic safety perspective. The proposed development will therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and drawings submitted to the planning authority on the 20th February 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This permission for construction of a wall relates to the lands within the red line boundary of the application site, only.</p> <p>Reason: In the interest of orderly development.</p>
3.	<p>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 all intended construction practice for the development, including measures for protection of existing development and boundary walls, construction traffic routing and management, construction parking, materials storage, site compound, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4.	<p>Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours 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.</p>

	Reason: In order to safeguard the residential amenities of property in the vicinity.
5.	<p>The developer shall prevent any mud, dirt, debris or building material being carried onto or placed on the public road or adjoining properties as a result of the site works and repair any damage to the public road arising from carrying out the works.</p> <p>Reason: In the interests of orderly development.</p>
6.	<p>The requirements of the Traffic Area Engineer shall be adhered to, in particular, the developer shall ensure the following measures:</p> <p>(i) All works adjacent to or on the road shall acquire a road opening licence.</p> <p>(ii) The area between the proposed wall and the existing kerb shall be finished in 75mm macadam.</p> <p>(iii) The height of the proposed wall shall be more than 900mm high from the existing footpath level.</p> <p>(iv) The wall shall be finished in natural stone. The stone shall be generally in keeping with the stone facing on the roadside boundaries on the opposite side of Park Road.</p> <p>Reason: In the interests of traffic safety and orderly development.</p>

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

Fiona Fair
 Planning Inspector
 30.07.2023