



An  
Bord  
Pleanála

Board Order  
ABP-313744-22

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 21/1248**

**Appeal** by Laura and Graham Foster and Andrius Krusa care of Coakley O'Neill Town Planning of NSC Campus, Mahon, Cork against the decision made on the 10<sup>th</sup> day of May, 2022 by Kerry County Council to grant subject to conditions permission to Tulfarris CG Limited care of John Phelan Architects of 26 Castle Countess, Tralee, County Kerry in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** Retention of demolition of derelict structures on site and full planning permission to (a) demolish residual structures on site, and (b) construct an apartment building comprising 19 number apartments, including all ancillary works, roads, pavements and services, all on the old Jones Joinery Site at New Canal Road, Tralee, County Kerry. The further public notices were received by the planning authority on the 3<sup>rd</sup> day of March, 2023.

### **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

The Board had regard to the Kerry County Development Plan 2022-2028, Volume 2, Town Development Plan, Tralee, particularly Section 1.5.2, which classifies this site as a smaller brownfield site and identifies it as "Other Opportunity Sites". The plan states that "the local authority will encourage the development of these sites throughout the town on a case-by-case basis".

The plan includes an Objective TR41 to: "Facilitate and/or require the preparation of masterplans for the Opportunity sites and the Lohercannon Area where appropriate prior to the redevelopment of opportunity sites identified in the plan to ensure their development in a cohesive and integrated manner." In this instance the Board does not consider the preparation of a Masterplan to be necessary due to the position of this development site within the opportunity site, the overall size of the opportunity site, the grant of permission for another site within the opportunity site (Register Reference 21/938 ABP-312838-22), and the assessment of the proposed scheme both by the planning authority and the Inspector that considered the design and layout of the scheme as revised at application stage to be acceptable.

The site is zoned M4, with the zoning objective "Built Up Area". The description of this zone is "Provides for a mix of land uses which may have existing buildings in place, brownfield lands and undeveloped greenfield lands within the development boundary". Residential is open for consideration in this zone. In this instance the residential use proposed is considered to support in general the primary land use of the surrounding existing built up area and, therefore, subject to compliance with the conditions set out below, is acceptable.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted that in the Kerry County Development Plan 2022-2028, Volume 2, Town Development Plan, Tralee, Section 1.5.2, this site is identified as a smaller brownfield site and is referred to as "Other Opportunity Sites". The plan includes an Objective TR41 to; "Facilitate and/or require the preparation of masterplans for the Opportunity sites and the Lohercannon Area where appropriate prior to the redevelopment of opportunity sites identified in the plan to ensure their development in a cohesive and integrated manner." In this instance the Board does not consider the preparation of a Masterplan to be necessary due to the position of this site within the opportunity site, the overall size of the opportunity site, the grant of permission for another site within the opportunity site (Register Reference 21/238 ABP-312838-22), and the assessment of the proposed scheme both by the planning authority and the Inspector that considered the design and layout of the scheme as revised at application stage to be acceptable. The site is zoned M4, where residential development is open for consideration. The proposed development would, therefore, be in accordance with the Tralee Town Plan, the Kerry County Development Plan 2022-2028 and the proper planning and sustainable development of the area.

### **Appropriate Assessment Screening**

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of identification of the European Sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans and projects, on these European Sites in view of the site's conservation objectives and that a Stage 2 Appropriate Assessment is not, therefore, required.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 9<sup>th</sup> day of February 2022 and the 13<sup>th</sup> day of April 2022, except as may otherwise be required in order to comply with the following conditions.  
Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to the commencement of development, the applicant shall submit to, and agree in writing with, the planning authority, an amended ground floor plan at a scale of not less than 1:100. The amended ground floor plan shall incorporate the reorganisation of the internal bin store and adjacent internal bicycle store so that the bicycle store is accessed directly from the public pavement (and not through the apartment development entrance foyer as indicated on the 'Ground Floor Plan' drawing number 2106 FI 10a received by the planning authority on the 9<sup>th</sup> day of February, 2022).

**Reason:** In the interests of residential amenity and to facilitate easier access to the internal bicycle store.

3. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Uisce Éireann.

**Reason:** In the interest of public health.



4. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Details of drainage proposals shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

5. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of Section 94(4) and Section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under Section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this Order, the matter in dispute (other than a matter to which Section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

**Reason:** In the interest of visual amenity.

8. Prior to commencement of development, a landscape plan for the site, to include suitable native Irish species shall be submitted to, and agreed in writing with, the planning authority. Within one year of the occupation of the development, the developer shall submit a certification of compliance prepared by a suitably qualified person stating that all landscaping conditions pertaining to the grant of planning permission have been complied with, photographic evidence of same shall be submitted.

**Reason:** In the interests of residential and visual amenity.

9. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

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

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

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

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



13. In addition to condition number 12 above, the developer shall pay to the planning authority a financial contribution in lieu of 13 number car parking spaces required to serve the development, that are provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is considered reasonable that the developer pay a financial contribution in lieu of car parking spaces required to serve the development, said contribution being provided for in the Kerry County Council Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended.

  
Tom Rabbette

Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.

Dated this 22<sup>nd</sup> day of Dec, 2023.

DECISION QUASHED