

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/17

Appeal by James Collins of 1 Lower Ballymullen, Tralee, County Kerry against the decision made on the 5th day of September, 2022 by Kerry County Council to grant subject to conditions a permission to Paddy Sugrue and Edward Kelliher care of Seán MacGillicuddy Architects of Hill House, Tiernaboul, Killarney, County Kerry in accordance with plans and particulars lodged with the said Council:

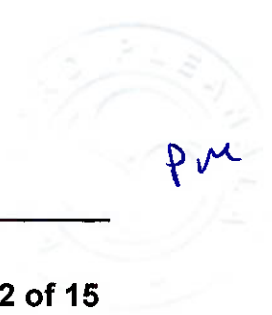
Proposed Development: 1. Demolish houses numbers 1, 2, 3 and 4, Ballymullen Road, Tralee. 2. Construct a residential development of 30 number dwellings comprising: (i) four 2½ storey detached houses, (ii) two terraces of three 2½ storey houses and (iii) two terraces of four 2½ storey houses, (iv) twelve apartments in three detached three-storey buildings. (3) Construct a new vehicular and pedestrian access/egress at Ballymullen Road to serve the proposed development. 4. Carry out all associated works and all associated site works necessary to facilitate the proposed development at Ballymullen Road/Cloonbeg, Tralee, County Kerry. The proposed development is in the vicinity of a protected structure/s, as amended by the further public notices received by the planning authority on the 9th day of June, 2022.

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

Having regard to the provisions of the Kerry County Development Plan 2022 – 2028 and Tralee Town Development Plan 2009-2015 (as extended and varied) as incorporated into the Kerry County Development Plan 2022 – 2028, the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January 2024, and having regard to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and would be acceptable in terms of pedestrian and traffic safety, and would not increase the flood risk in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



Appropriate Assessment Screening

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that, having regard to the site's location in an urban area, the nature and scale of the works, the separation distance between the site and the Tralee Bay and Magharees Peninsula West to Cloghane Special Area of Conservation (Site Code: 002070), the Tralee Bay Complex Special Protection Area (Site Code: 004188) and the Ballyseedy Wood Special Area of Conservation (Site Code: 002112) and to the characteristic of the designated sites and qualifying interests, it is considered that, the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effects on any of the designated sites or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of an Natura Impact Statement (NIS)) is not, therefore, required.

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Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 24th day of May 2022 and the 9th day of August 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 developer shall enter into water and/or waste water agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

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

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

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

Reason: In the interest of public health.

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

Reason: In the interest of visual amenity.



6. (a) An annotated colour photographic record of the four houses proposed for demolition shall be compiled. The survey record shall be submitted to the planning authority prior to the demolition phase of the development.
- (b) The boundary wall to the north, south and east of the site shall be protected from damage during the course of the development. Where required, localised consolidation can be carried out under the direct supervision of a conservation professional during the course of the development.
- (c) A maintenance plan for the ongoing conservation and protection in situ of this wall should be incorporated into any future management company or structure designed to cater for the development post construction.

Reason: To protect the character of the boundary wall which adjoins protected structures in the vicinity of the site.

7. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

8. The developer shall liaise with the planning authority prior to commencement of development in relation to the installation/incorporation of swift nest boxes into the development.

Reason: In the interest of biodiversity protection.

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9. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets issued by the Department of Transport, Tourism and Sport and Department of Environment, Community and Local Government in May 2019. Drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

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

Reason: In the interests of visual and residential amenity.

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

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

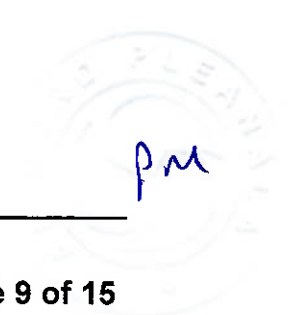
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12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide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

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

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

Reason: In the interests of amenity and public safety.



14. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

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

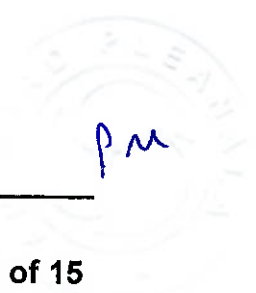
Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

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

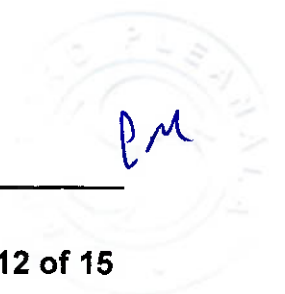
Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

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

Reason: In the interest of urban legibility.



18. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- (a) A plan to scale of not less than 1:500 showing –
 - (i) The species, variety, number, size and locations of all proposed trees and shrubs [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include prunus species]
 - (ii) Details of screen planting [which shall not include cupressocyparis x leylandii]
 - (iii) Details of roadside/street planting [which shall not include prunus species]
 - (iv) Hard landscaping works, specifying surfacing materials, furniture [play equipment] and finished levels.
 - (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
 - (c) A timescale for implementation [including details of phasing]



All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

19. All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.



20. 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.

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

Reason: To ensure the satisfactory completion of the development.



22. 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.



Peter Mullan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board**

Dated this *1st* day of *February*, 2024