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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 22/715**

**Appeal** by Brian Flannery and Marie-Josée Leclerc of Old Presbytery, Ballyoughtragh North, Milltown, County Kerry against the decision made on the 17<sup>th</sup> day of February, 2023 by Kerry County Council in relation to an application to Ross Building and Maintenance Solutions Limited care of Declan Noonan and Associates of Upper Main Street, Dingle, County Kerry for permission to construct (a) a residential respite care centre consisting of 46 number en-suite bedrooms, public reception areas, treatment rooms, activity rooms, dining and lounge rooms, resident day space areas, staff facilities and ancillary support rooms, (b) an assisted living community consisting of 12 number two bedroom single storey dwelling units served by own private outdoor amenity spaces and (c) a detached medical storage unit. The development will be served by a common access road and also provisions will be made for common car parking for residents and visitors, public outdoor amenity areas, and a common services plant building, all units to be connected to public services and also to include all associated site works at Ballyoughtragh North, Milltown, County Kerry in accordance with the plans and particulars lodged with the said Council (which decision was to grant subject to conditions a permission to construct (a) a residential respite care centre consisting of 46 number en-suite bedrooms, public reception areas, treatment rooms, activity rooms, dining and lounge rooms, resident day space areas, staff facilities and

ancillary support rooms, (b) an assisted living community consisting of 12 number two bedroom single storey dwelling units served by own private outdoor amenity spaces. The development will be served by a common access road and also provisions will be made for common car parking for residents and visitors, public outdoor amenity areas, and a common services plant building, all units to be connected to public services and also to include all associated site works and to refuse permission for a detached medical storage unit. As amended by the further public notices received by the planning authority on the 23<sup>rd</sup> day of December, 2022 and the 23<sup>rd</sup> day of January, 2023.

## **Decision**

**GRANT permission for (a) a residential respite care centre consisting of 46 number en-suite bedrooms, public reception areas, treatment rooms, activity rooms, dining and lounge rooms, resident day space areas, staff facilities and ancillary support rooms, (b) an assisted living community facility consisting of 12 number two bedroom single storey dwelling units served by a common access road and also provisions to be made for common car parking for residents and visitors, public outdoor amenity areas and a common services plant building, all units to be connected to public services and to include all associated site works in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.**

**REFUSE permission for a detached medical storage unit based on the reasons and considerations marked (2) under.**

## Reasons and Considerations (1)

Having regard to the nature and scale of the subject development, and to the policies of the planning authority, as set out in the Kerry County Development Plan 2022-2028 specifically Objective KCDP 7-20 which seeks to provide and facilitate the provision of suitable accommodation in appropriate locations to meet the needs of older people and Objective KCDP 7-19 which seeks to facilitate and support the provision of semi supported/assisted living development at appropriate locations in settlements close to facilities and services, and to the Objective S5 – Mixed/General Community Services/Facilities zoning objective of the site and the relevant provisions of the Corca Dhuibhne Electoral Area Local Area Plan (LAP) 2021-2027 which includes Milltown specifically Section 2.5.7 which refers to Age Friendly Communities and Older People and Objective SC-1 which is an objective that the Council work in partnership with the health/education sector, communities and other agencies to develop facilities in key locations where possible, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable at this location, would not seriously injure the amenities of the area or of property in the vicinity, would be beneficial in terms of public health, would be acceptable in terms of traffic safety and convenience, and would not conflict with the provisions of the said Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 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 7<sup>th</sup> day of December 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. A revised site layout map, showing the omission of the storage unit/s to the rear of the site and a revised landscaping layout at this location shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. Prior to the commencement of development, the developer shall enter into water and/or wastewater agreement(s) with Uisce Éireann.

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

4. 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.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**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.

5. A buffer zone shall be preserved around the recorded monument KE 047 056. This buffer zone shall be measured from the outermost element of the monument. No traffic of machinery, excavation or storage of material shall take place within the buffer zone.

**Reason:** In order to protect the archaeological heritage of the area.

6. 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.

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

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

8. 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) existing trees, hedgerows, shrubs, and ditches, specifying which are proposed for retention as features of the site landscaping,
  - (ii) the measures to be put in place for the protection of these landscape features during the construction period,



- (iii) 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,
  - (iv) details of screen planting which shall not include cupressocyparis x leylandii,
  - (v) details of roadside/street planting, and
  - (vi) hard landscaping works, specifying surfacing materials, furniture 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, 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 interests of residential and visual amenity.

9. 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.

10. 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.

11. 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.

12. 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.



13. 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.

## Reasons and Considerations (2)

The proposed development of a storage unit on site would materially contravene Objective LS-ZON-01 indicated in the Corca Dhuibhne Electoral Area Local Area Plan (LAP) 2021-2027 for Milltown relating to the zoning of the land for the use primarily for Mixed/General Community Services/Facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.



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Joe Boland

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

Dated this 21<sup>st</sup> day of November 2024.