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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 23/967**

**Appeal** by Laune Salmon and Trout Anglers Association care of Michael J Duffy, Consulting Chartered Civil Engineer of 1 Clós Na hEaglaise, Kilfenora, County Clare against the decision made on the 27<sup>th</sup> day of October, 2023 by Kerry County Council to grant subject to conditions a permission to KPH Construction care of Virtus of 5<sup>th</sup> Floor, Glass House, Smithfield, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Construction of 249 number dwellings comprising of two number five bedroom houses, six number four bedroom houses, 117 number three bedroom houses, 18 number two bedroom houses, 68 number two bedroom apartments and 38 number one bedroom apartments. All houses and apartments are contained in two-storey buildings in height and comprise a mix of terrace and semi-detached typologies. House type f (four bedroom semi-detached) and house type g (five bedroom semi-detached) include residential accommodation at attic/second floor level with associated rooflights. The apartments include balconies/ground floor terraces as private open space provision. The development includes public open space including play facilities, a new vehicular access from Upper Park Road, all internal

roads and footpaths including a number of homezones/shared surfaces, boundary treatment and hard and soft landscaping, drainage works for the new development and all associated and ancillary works. The proposed development also includes a new two-way cyclepath and a footpath along Upper Park Road, with pedestrian crossings on Upper Park Road, a two-storey crèche of circa 417 square metres gross floor space with associated open space and PV panels at roof level, 510 number surface car parking spaces (including accessible spaces) for the residential development and 19 number surface car parking spaces for the crèche, 352 number bicycle parking spaces are provided in secure facilities for the maisonette units to the rear of each unit at Cronin's Wood, Upper Park Road, Killarney, County Kerry.

## **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**

In making its decision, the Board had regard to:

- (i) the site's location on lands with zoning objectives for 'R1' and 'Landscape Protection', and objectives of the Kerry County Development Plan 2022 – 2028 and Killarney Town Plan 2022-2028 in respect of residential development,

- (ii) the nature, scale and design of the proposed development which is consistent with the provisions of the Kerry County Development Plan 2022 – 2028 and Killarney Town Plan 2022-2028 and appendices contained therein,
- (iii) the Sustainable Residential Development and Compact Settlements: Guidelines for Planning Authorities (2024),
- (iv) the Urban Development and Building Height, Guidelines for Planning Authorities (2018),
- (v) the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023),
- (vi) Housing for All, issued by the Department of Housing, Local Government and Heritage in September 2021,
- (vii) the pattern of existing and permitted development in the area, and
- (viii) the submissions and observations received.



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## **Appropriate Assessment (AA) - Stage 1**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within an established town centre location and adequately serviced urban site, the Appropriate Assessment Screening Report submitted with the application, the Inspector's Report, and submissions on file.

In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, other than the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site code: 000365), which is the European Site for which there is potential for significant effects.

## **Appropriate Assessment - Stage 2**

The Board considered the Natura Impact Statement and all other relevant submissions including expert submissions received and carried out an Appropriate Assessment of the implications of the proposed development on the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site code: 000365) in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best available scientific knowledge in the field.



In completing the assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European site.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site in view of the conservation objectives of the site. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

#### **Environmental Impact Assessment (EIA):**

The Board completed an Environmental Impact Assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, which contains the information set out Schedule 7A to the Planning and Development Regulations 2001 (as amended), identifies and describes adequately the



direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(i) and(iv), as amended,
- The location of the site on lands governed by zoning objective R1 Proposed Residential and Landscape Protection in the Kerry County Development Plan 2022 - 2028, and the results of the strategic environmental assessment of the Development Plan undertaken in accordance with the SEA Directive (2001/42/EC),
- The existing use on the site and pattern of development in surrounding area,
- The planning history relating to the site,
- The availability of mains water and wastewater services to serve the proposed development, and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.



### **Conclusions on Proper Planning and Sustainable Development:**

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density at this location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height, and quantum of development, as well as in terms of traffic and pedestrian safety and convenience. The proposal would, subject to conditions, provide an acceptable form of residential amenity for future occupants and 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, 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. The applicant shall provide recessed nesting swift boxes incorporated into the built fabric of the proposed development. The number and locations of such shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

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

3. Prior to the commencement of development, the applicant shall submit a detailed design for the provision of a pedestrian crossing on the L-3010 and on the Woodlands Road, and the provision of a tabletop ramp at the entrance to the development. These details shall be agreed in writing with the planning authority and completed prior to the occupation of the 151<sup>st</sup> dwelling within the development unless otherwise agreed with the planning authority.

**Reason:** In the interest of pedestrian safety and movement.

4. The specification of the Upper Park Road Cycleway shall comply with NTA Specifications and the National Transport Authority-Cycle Design Manual with details of such to be submitted to and agreed in writing with the planning authority.

**Reason:** In the interest of pedestrian safety and sustainable transport.

5. Prior to commencement of development the developer shall provide revised details of the materials, colours and textures of all the external finishes to the proposed buildings. This revised scheme shall provide for an appropriate variety and mix of external finishes sufficient to provide an identity and character to different parts of the overall development and to avoid a monotonous or uniform visual appearance to the development.

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



6. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of urban legibility.

7. The hours of operation of the creche facility shall be agreed in writing with the planning authority prior to commencement of development.

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

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

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

9. The road network serving the proposed development, including turning bays, junction with the public road, parking areas, footpaths and kerbs, access road to service areas shall be in accordance with the detailed construction standards of the planning authority for such works.

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

10. A minimum of 10% of all car parking spaces shall be provided with functioning EV charging stations/ points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development. The car parking spaces for sole use of the car sharing club shall also be provided with functioning EV charging stations/ points.

**Reason:** To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

11. The level of communal bicycle parking spaces specified in the information submitted shall be provided within the site. Details of the layout, marking demarcation and security provisions for these spaces shall be as submitted with this application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

12. 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 and surface water management.



13. The developer shall enter into water and wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

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

14. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted including the provision of the planting to maintain the bat commuting corridor identified to the south of the site and the landscape berm to prevent headlight glare to this area, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

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

15. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any housing unit and shall comply with the recommendations of the Ecological Impact Assessment (EclA) with reference to bats.

**Reason:** In the interests of amenity and public safety, and to ensure the protection of bats.

16. (a) 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 for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

17. 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.

18. The construction of the development shall be managed in accordance with a Construction Environmental 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 with measures to reflect mitigation described in the submitted Construction Environmental Management Plan, Ecological Impact Assessment and Tree Survey, in addition to the following:
- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) Location of access points to the site for any construction related activity;
  - (c) Location of areas for construction site offices and staff facilities;
  - (d) Details of site security fencing and hoardings;
  - (e) Details of on-site car parking facilities for site workers during the course of construction;
  - (f) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
  - (g) Measures to obviate queuing of construction traffic on the adjoining road network;

- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- (i) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains; and
- (n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

19. 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.

20. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,
  - (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

21. All mitigation measures set out in the submitted Ecological Impact Assessment and the Natura Impact Statement shall be implemented in full in the carrying out and occupation of the permitted development. A suitably qualified ecologist shall oversee the site set up and construction of the proposed development and implementation of mitigation measures and shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

**Reason:** To protect residential amenity and natural heritage.

22. Prior to the commencement of 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 housing unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses 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.





23. 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 Act 2000, as amended, and of the housing strategy in the development plan of the area.

24. Prior to 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

25. 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.

26. The developer shall pay the sum of €276,500 (two hundred and seventy six thousand, five hundred euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended in respect of:

- (a) detailed design and supervision of works of the proposed development on public property (footway, cycleway, traffic calming measures),

- (b) the provision of public footpaths and cycleway to link the proposed development to the public network on the L3010,
- (c) the provision of general traffic calming measures, and
- (d) towards the improvement of the relocation of road markings infrastructure on the L3010.

This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of 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 should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme, and which will benefit the proposed development.



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**Stewart Logan**

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

**Dated this 21<sup>st</sup> day of March 2024**