

An  
Bord  
Pleanála

Board Order  
ABP-319141-24

---

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Waterford City and County Council**

**Planning Register Reference Number: 23/39**

**Appeal** by Mary Kiersy and Leah Kiersey of Currabaha East, Kilmacthomas, County Waterford against the decision made on the 2<sup>nd</sup> day of February, 2024 by Waterford City and County Council to grant subject to conditions a permission to SE Construction (Kent) Limited care of Hyphen Architects Limited of 33-37 Stranmillis Road, Belfast, Northern Ireland in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Demolition of existing agricultural buildings and construction of 98 number dwellings to comprise of 10 number four bed detached two-storey houses, 36 number four bed semi-detached two-storey houses, 36 number three bed semi-detached two-storey houses, 10 number two bed semi-detached two-storey houses, 6 number two bed single storey houses, new vehicular and pedestrian site entrance, new mains water and foul sewage connections, provision of a storm water attenuation pond to north of site, part infill of lands to north of site with excavated material from development site and all associated ancillary site work, all at Graigueshoneen, Kilmacthomas, County Waterford. The proposed development was revised by further public notices received by the planning authority on the 11th day of January, 2024.

## **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 coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the Mid-Waterford Coast Special Protection Area (Site Code:004193),
- (e) the policies and objectives of the Waterford City and County Development Plan 2022-2028,
- (f) the nature, scale and layout of the proposed works as set out in the application for approval,



- (g) the pattern of existing approved phases of development in the area,
- (h) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (i) the submissions and observations received in relation to the proposed development, and
- (j) the report and recommendation of the Planning Inspector.

### **Appropriate Assessment Screening**

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 the identification of European sites that 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 or projects, on these European sites in view of the sites' conservation objectives.

The Board is satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to a significant effect on any European sites, in view of the site's conservation objectives, other than the Mid-Waterford Coast Special Protection Area (Site Code:004193), for which Appropriate Assessment is required.

## **Appropriate Assessment Stage 2**

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an Appropriate Assessment of the implications of the proposed development for the identified European Site, namely the Mid-Waterford Coast Special Protection Area (Site Code:004193), in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

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

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 integrity of 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 site's conservation objectives.

## **Proper Planning and Sustainable Development**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would accord with relevant policies and objectives of the development plan including the residential zoning for the site, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of pedestrian and traffic safety and would constitute an acceptable form of residential development at this serviced location. 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 further plans and particulars submitted on the 20<sup>th</sup> day of December 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.

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

2. The proposed development shall be amended as follows:
  - (a) House number 3 shall be omitted from the proposed development and the area incorporated into the public open space.



- (b) House type B1 shall be revised to include a bay window in the side gable, as referenced in the documentation submitted at further information stage, in order to provide for a dual frontage for all dwellings orientated with a gable wall to adjacent roads.
- (c) A suitably sized, enclosed bin storage unit shall be provided to the front of the mid-terraced dwellings.

Revised drawings 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 interest of residential amenity.

- 3. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

**Reason:** To protect the integrity of European Sites.

- 4. (a) The development shall be carried out on a phased basis, in accordance with drawing number '7887-HYP-A-910-Proposed Phasing Plan' received by the planning authority on the 20<sup>th</sup> day of December 2023. The first phase shall consist of not more than 20 dwelling units, together with their associated site development works.
- (b) The developer shall ensure that the appropriate section of access road, footpath, lighting, open space, landscaping and infrastructural services benefitting the dwellings are fully completed prior to those dwellings in Phase 1 being occupied.



- (c) Work on any subsequent phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed in writing with the planning authority.

**Reason:** To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

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. The developer shall engage a suitably qualified (licensed eligible) archaeologist to monitor (licensed under the National Monuments Acts) all site clearance works, topsoil stripping, groundworks associated with the development. Prior to the commencement of such works, the archaeologist shall consult with and forward to the Local Authority archaeologist or the National Monuments Service as appropriate a method statement for written agreement. The use of appropriate tools and/or machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary. Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, in consultation with the National Monuments Service, regarding appropriate mitigation.

The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified



by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.

Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest.

7. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan (CEMP) which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The Construction Environmental Management Plan (CEMP) shall include the location of any and all archaeological or cultural heritage constraints relevant to the proposed development as set out in Archaeological Assessment Report. The CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.

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





8. The site, including the areas of open space and the attenuation pond area shown on the approved plans, shall be landscaped in accordance with a landscape scheme which shall be agreed in writing with the planning authority prior to commencement of development. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation.

**Reason:** In order to ensure the satisfactory development of the open space areas, and their continued use for this purpose.

9. Revised drawings showing design details of any pathways connecting the subject site to the Greenway shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of active travel, residential amenity, proper planning and sustainable development.

10. The access from the public road, internal road, and vehicular circulation network serving the proposed development, including turning bays, 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 DMURS.

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

11. A footpath connecting the subject site from Old Road (L7099) as far as the junction of Main Street (L3043), including the junction upgrade works shall be provided by the developer in accordance with the Junction and

road Realignment Drawings 22020-200-3 and 22020-202 received by the planning authority on the 20<sup>th</sup> day of December 2023. Prior to commencement of development, a detailed specification for same shall be submitted and agreed in writing with the planning authority.

**Reason:** In the interests of pedestrian safety and connectivity to the wider area.

12. 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 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.

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

13. 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.

14. Prior to the commencement of development, the developer shall enter into a Connection Agreements with Uisce Éireann (Irish Water) to provide for service connections to the public water supply and wastewater collection network.

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

15. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, 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 residential unit.

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

16. 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.

17. Proposals for an estate/street name, house 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 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.

18. Prior to commencement of development, 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) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. 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 reducing waste and encouraging recycling.

19. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, 0800 to 1400 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. All 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.

21. (a) Prior to the commencement of any house 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), pursuant to Section 47 of the Planning and Development Act 2000, 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.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated, to the satisfaction of the planning authority, that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

**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 in accordance with the 'Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities', May 2021.

22. Prior to commencement of development, the developer 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.

23. 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.

24. 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.

25. The developer shall pay a financial contribution 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 the provision of adequate pedestrian infrastructure which benefits the proposed development. The amount of the contribution 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 for





determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

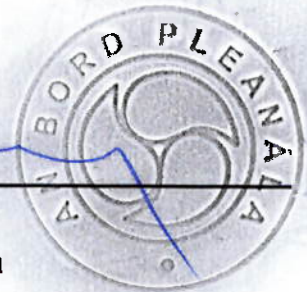
**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.



**Martina Hennessy**

**Member of An Bord Pleanála**

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



Dated this 21st day of November 2024.