



An  
Bord  
Pleanála

Board Order  
ABP-319312-24

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## **Planning and Development Acts 2000 to 2022**

**Planning Authority: Cork County Council**

**Planning Register Reference Number: 236580.**

**Appeal** by Karl Shane Diskin care of Kindis Property Development Limited of Threadneedle House, Moneygurney Road, County Cork against the decision made on the 23<sup>rd</sup> day of February 2024 by Cork County Council to refuse permission for the proposed development.

**Proposed Development:** Permission is sought for a residential development of 11 number dwellings laid out in two number buildings, a bicycle parking enclosure, car parking, landscaping, new site access points on Bay View and Marina View and all associated site works at 11 Beach Road, Passage West. The proposed development is within the curtilage of a railway tunnel which is a protected structure (RPS number 01470) all at Site bound by Beach Road and Bay View Road, Maulbaun, Passage West, County Cork. The proposed development was revised on appeal to 10 dwelling units.

## **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 following when reaching its decision; the design, scale and layout of the proposed development, the Protected Structure (a railway tunnel that traverses the site underground), the adjacent Architectural Conservation Area, site constraints including its difficult topography, the visibility of most elevated developments when viewed from the opposite side of the River Lee, the provisions of the Cork County Development Plan 2022 – 2028 and the Development Management Standards contained therein, the ZU 18-9 Existing Residential/Mixed Residential and Other Uses zoning of the site, the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities 2024, the Sustainable Urban Housing Design: Standards for New Apartments, Guidelines for Planning Authorities 2023, and to the Inspector's detailed report.

The Board considered that the proposed development, by virtue of its urban location, the separation distances achieved from other dwellings with no undue overlooking impacts, its design, scale and layout evidencing respect to the Protected Structure and to the adjacent Architectural Conservation zone, as canvassed in the reasonable and robust Architectural Heritage Impact Assessment, was acceptable on the site.

The Board further considered that the proposed development presents as single storey from Bayview Avenue (above) and is not therefore dissimilar in terms of size and scale to other developments on elevated sites in the area when viewed from Beach Road and from across the River Lee, that traffic and pedestrian safety can be managed and will not be endangered, that the density of the proposed development is appropriate to the location, that the proposed development complies with National and Local guidelines (Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022)), that the amenity of future residents



will be of a good standard with the majority of apartments enjoying a dual aspect and many a triple aspect, the proposed development would not adversely affect, either individually or in combination with other plans or projects, the integrity of the Cork Harbour Special Protection Area (Site Code 004030), the Great Island Channel Special Area of Conservation (Site Code 001058) or the proposed NHAs for Douglas River Estuary and Great Island Channel. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission the Board considered that the design represented a strong architectural response to the difficult characteristics of the site and its proximity to the ACA, that the proposed development was entirely consistent with the objectives contained within the National Planning Framework, that the revisions made during the Further Information and Appeal stages successfully addressed major concerns raised by the planning authority and observers, and that remaining minor design matters can be addressed by way of conditions, the Board also concurred with the planning authority's architect that an appropriate civil engineering solution can be applied to protect the tunnel during construction, the Board noted that ownership of the tunnel is a civil matter and that all approved developments remain constrained by Section 34 (13) of the Planning and Development Act 2000.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning authority on 21<sup>st</sup> of December 2023 and the revised plans received by An Bord Pleanála on the 19<sup>th</sup> day of March 2024, 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 to:
  - (a) Exchange the location of the Central Refuse Storage and Maintenance area in Building 2 (Drawing Reference: 0027\_Refuse Store Revision 00, as received by An Bord Pleanála with appeal on the 19<sup>th</sup> day of March 2024) with the adjacent unit, so that the storage areas lie between the two units.
  - (b) Provide 1.8 metres high screening to the Northern and Southern sides of the terrace on the first floor of Building 2.
  - (c) The design/finish of the retaining wall on the Western side of the proposed laneway, immediately opposite Building 1, shall be of high quality to reduce its appearance as a blank façade.

The developer to submit revised drawings, materials and finishes for the written agreement of the planning authority.

**Reason:** In the interest of residential amenity for future residents and to reduce overlooking

3. 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 (noting Condition 2 above), separation and collection of the waste and, in particular, recyclable materials for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and 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.

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

**Reason:** In the interest of public health and to ensure adequate water/wastewater facilities.

5. 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 interest of visual and residential amenity.

6. The proposed development hereby granted is for 10 dwelling units only.

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

7. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

**Reason:** To prevent flooding and in the interests of sustainable drainage.

8. If, during the course of site works any archaeological material is discovered, the City/County Archaeologist/Planning Authority shall be notified immediately. The applicant/developer is further advised that in this event that under the National Monuments Act, the National Monuments Service, Dept. of Housing, Heritage and Local Government and the National Museum of Ireland require notification.

**Reason:** In the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development.

9. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees within the proposed development. Such lighting shall be provided prior to the making available for occupation of any residential unit.

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

10. The proposed 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:
- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) Location of areas for construction site offices and staff facilities;
  - (c) Details of site security fencing and hoardings;
  - (d) Details of car parking facilities for site workers during the course of construction;
  - (e) Details of the timing and routing of construction traffic, predominantly via Beach Road, to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
  - (f) Measures to obviate queuing of construction traffic on the adjoining road network;
  - (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
  - (h) 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;
  - (i) Details for the movement of crane(s) to and from the site and use during the construction period;
  - (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.
- (n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority;

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

11. The landscaping scheme shown on drawing number 0027\_Landscape MPLan Revision 00, as submitted with application, shall be completed within the first planting season following substantial completion of external construction works. 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 interest of residential and visual amenity.



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

**Reason:** In the interest of visual amenity and to ensure an appropriate high standard of development.

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

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

14. 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 on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall 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 for the area.

15. (a) 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, that is, 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 unit or duplex 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 housing units, in which case the planning authority shall confirm in writing to the applicant 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.

16. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this

17. All the communal parking areas serving the residential units shall be provided with functional 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.

18. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development.

**Reason:** To ensure the satisfactory completion of the development.

19. 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.

  
Declan Moore

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



Dated this 30<sup>th</sup> day of APRIL 2025.