



An  
Bord  
Pleanála

## Inspector's Report ABP-301767-18

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<b>Development</b>	Demolition of house and garage and construction of 32 houses
<b>Location</b>	Ballynacubby, Kinsale, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	17/6867
<b>Applicant(s)</b>	Patricia Fogarty
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	David Galvin Springmount Residents Association
<b>Date of Site Inspection</b>	21 <sup>st</sup> November, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The proposed 4.1 acre site is located approximately 1km west of the town centre of Kinsale. There is an existing single-storey dwelling at the northern end of the site with access onto a local road that leads to Kinsale Community Sports and Leisure Project. The remainder of the site is in agricultural use. The site slopes in a southerly direction. The established housing estate of Springmount is located to the east and south. Lands to the north-west of the site have been subject to planning permission for a Cluid housing scheme. A Belvedere Tower (in ruin) is located immediately to the west of the site. Commogue Marsh, a wildlife and bird sanctuary, is located approximately 200m to the south.

## **2.0 Proposed Development**

2.1. The proposed development would comprise the demolition of a detached, single-storey dwelling and garage and the construction of 32 dwellings. The new houses would be developed in two separate schemes, with a scheme of 10 four bedroom, detached, split level houses developed at the northern part of the site and a scheme of 22 three bedroom, semi-detached, two-storey houses developed at the southern part of the site. The former scheme would provide for five detached houses directly accessing via the route serving the existing dwelling and would also include the widening of the "Saile Road" beyond this to include a new footpath and cycle lane. The latter scheme would access the Springmount housing estate road to the south.

2.2. Details submitted with the application included an Architectural Design Statement, a Planning Report, an Infrastructure Report, a Public Lighting Report, an AA Screening Report, an Ecological Assessment Report, a Bat Survey, an Archaeological Assessment Report, an Archaeological Geophysical Testing Report, a Traffic and Transport Assessment, a Road Safety Audit, a Visual Assessment Report, and a Construction Management Plan. The application also provided letters of consent from Cork County Council and McInerney Homes receiver and letters of support from Paul Hudson Architect and Clúid Housing Association.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 8<sup>th</sup> May, 2018, Cork County Council decided to grant permission for the proposed development subject to 33 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted differences between the proposal and a previously permitted residential scheme on the site, development plan provisions, third party submissions, and reports received. The proposed middle row of houses was not seen to successfully integrate with its context. It was noted that the density of development at 18 dwellings per hectare fell within the density range permitted in the Local Area Plan. Clarification on open space was considered necessary. A request for further information was recommended.

The Senior Executive Planner concurred with the Planner's recommendation.

#### **3.2.2. Other Technical Reports**

The Public Lighting Engineer had no objection to the development subject to a revised design being submitted for approval and a schedule of conditions set out in the report.

The Housing Officer was satisfied that the proposed three houses to be provided under Part V as social housing units were suitable.

The Estates Engineer requested further information relating to parking capacity and surface water attenuation.

The Area Engineer welcomed the proposed traffic calming measures. It was submitted that if further information was being requested, a cross section of the modified Sáile Road should be requested to see how the proposed cycle lane fits and clarity should be received on the proposed 'local play areas'.

The Archaeologist requested further archaeological testing and requested further details on the nature and date of the development boundary and proposed mitigation measures where historic features are identified.

### 3.3. **Prescribed Bodies**

Inland Fisheries Ireland had no objection to the development provided Irish water is satisfied there is sufficient capacity to accommodate effluent generated.

Irish Water had no objection to the proposal.

### 3.4. **Third Party Observations**

Objections to the proposal were received from Mary Hurley, Anne Madden, Leo Gimblett, Suzanne Lawlor, Springmount Residents Association, Ita O'Donovan, David Galvin, Natasja van der Stel, Susan Cassidy, Anne-Marie Levis, and Philip Crowe. The grounds of the appeals reflect the principal planning concerns raised.

3.5 On 10<sup>th</sup> January, 2018, a request for further information was sought in accordance with the Planner's recommendation. A response was received by the planning authority on 10<sup>th</sup> April, 2018. This included a revised layout of houses at the northern part of the site, boundary treatment details, surface water and attenuation details, an enlargement of open space for the middle section of the site, archaeological considerations, parking and traffic calming provisions, improved accessibility to house sites, and detail on an existing boundary wall.

3.6 Further to the receipt of this information, the reports to the planning authority were as follows:

The Public Lighting Engineer noted the further information had no information relating to public lighting.

The Estates Engineer had no objection to the proposal subject to conditions.

The Archaeologist recommended that permission is granted subject to conditions.

The Area Engineer had no objection to the proposal subject to conditions.

The Planner recommended that permission be granted subject to conditions.

## 4.0 Planning History

P.A. Ref. 07/9384

Permission was granted for the demolition of the existing house and the construction of 14 houses and 29 apartments.

## 5.0 Policy Context

### 5.1. Bandon Kinsale Local Area Plan 2017

Zoning

The site is zoned 'Residential' and has a specific zoning objective (KS-R-04) for medium density housing. The zoning seeks a net density of between 12 and 25 dwellings per hectare.

## 6.0 The Appeals

### 6.1. Grounds of Appeal by David Galvin

The appellant resides at 76 Springmount to the east of the northern section of the site. The grounds of the appeal may be summarised as follows:

- There are a number of errors with boundary lines which is a legacy issue resulting from the operations of the McInerney construction group. The appellant draws the Board's attention to a side boundary wall and the need to have this matter corrected.
- The side and rear walls were not designed to act as a retaining wall to the proposed public roadway. There is concern about the structural stability of the wall and the proximity to public traffic on an acute bend without barrier protection. The appellant requests the replacement of the wall to the correct location and for it to be an adequate retaining wall with barrier protection.
- There are other concerns referenced as traffic control during construction and operational phases and health and safety issues.

## 6.2. Grounds of appeal by Springmount Residents Association

The grounds of the appeal may be synthesised as follows:

- There is concern about the proposed access through Lower Springmount, the traffic impact, parking issues, and safety in the context of the residents of the estate and school accesses.
- It is not clear that the Council has permission to grant access for the second entrance on Lower Springmount Road, while the first entrance is caught up under receivership and the boundaries with No. 76 Springmount need to be rectified.
- The taking in charge status of the estate is queried as issues arise in the established estate with blocked road gullies and odours from sewers.
- Lower Springmount is prone to flash flooding and runoff from the proposed development and the permitted Clúid development could have a major impact on the local stream to the west of the site and on Cammogue Marsh.
- The traffic safety concerns for children in the established estate arising from the proposed development are paramount.
- On-street parking exists and the impact of the proposed two entrances onto Lower Springmount is referenced. It is queried why access through the water treatment plant was not considered.
- The loss of boundary hedgerow between Springmount and the proposed development is a significant amenity loss and needs to be protected.

The appeal includes a letter of support from Senator Tom Lombard and a copy of the submission to the planning authority.

## 6.3. Applicant Response

The applicant's response to the appeals may be synthesised as follows:

## Traffic Safety

- The submitted Transportation Assessment addressed the traffic and transportation impact associated with the site and the Clúid housing scheme and concluded there are no traffic capacity, safety or operational issues.
- The proposal constitutes infill residential development with access via established junctions and a detailed traffic survey was undertaken at these junctions.
- A Road Safety Audit was carried out in relation to access at Lower Springmount and gave recommendations on speed calming measures.
- While acknowledging traffic and parking associated with the nearby community school, there would be a negligible impact associated with the proposed development. Issues relating to the school are outside of the applicant's control.
- There is sufficient parking provided through the existing estate in several locations to serve the parking needs of residents and visitors. The proposed development provides sufficient parking for its needs.
- It is noted from the Construction Management Plan that no construction vehicles will enter Springmount.

## Drainage

- The applicant cannot resolve issues relating to drainage within Lower Springmount but has made every effort to ensure that the proposed development would not affect this location.
- The proposed foul sewer network has been designed to accommodate the proposal and future flows from the adjacent Clúid housing scheme. The waste water design was submitted to Irish Water for approval.
- Regarding storm water, SuDS management is to be implemented to include attenuation and treatment. The effect of surface water discharge was assessed in an Ecology Report.
- The surface water network has been designed to avoid localised flooding.

### Ecological Impact

- Only treated surface water will discharge at the existing greenfield rate and impacts on Commoge Marsh are not anticipated. Commogue Marsh is not a designated site.
- The Screening Report concluded that there would be no significant effects on the nearest Natura 2000 sites.
- The existing planted ditch and landscaping on the southern boundary is proposed to be retained where possible and will be removed where road access is proposed. New trees and planting are proposed throughout the development.
- In relation to the sycamore tree to be removed, a bat survey found no bats emerging from this tree and that bat activity is low to moderate due to high levels of artificial light pollution. Appropriate measures will be taken with the felling of the tree.

### Taking in Charge

- Springmount estate has been taken in charge by the Council and issues relating to the estate should be directed to the Council.
- It is intended that the proposed scheme would be taken in charge by the Council and a number of conditions attached with the planning authority's decision are noted.

### Legal Issues and the Completion of the Estate

- An attached Solicitor's letter clarifies that boundaries are party, as is normal, that the applicant reached agreement with the Receiver for McInerneys to transfer any lands that abut the applicant's lands and those which are contained within Springmount estate that are taken in charge by the Council. It is noted that a letter of consent from McInerneys for the making of the application was submitted with the application.
- The existing boundary wall to the rear of Nos. 76-80 Upper Springmount will be retained as is and the Board is asked to attach a condition to that effect.

The wall would not come under any loading pressure from the construction of the estate road.

The response included a letter from the applicant's Solicitor addressing the issues referenced above.

#### 6.4. **Planning Authority Response**

I have no record of any response to the appeals from the planning authority.

### 7.0 **Assessment**

#### 7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the proposed development are:

- The traffic impact,
- Drainage and flooding,
- Impacts on boundaries,
- Loss of trees, and
- Title and taking-in-charge.

7.1.2 Prior to considering these issues, it is my submission to the Board that, having regard to the topographical characteristics of this site (i.e. the relatively steeply sloping land) impacting on the nature and extent of potential development suited to these lands and to the scale of the proposed development falling within Development Plan provisions on these residentially zoned lands, the density of development on these serviceable lands is acceptable. Furthermore, I submit that the proposed development, due to its design and layout, would have no significant adverse impacts on residential amenity by way of loss of privacy, overshadowing, etc. and would have no demonstrable effects on the nearby Belvedere Tower sited on adjoining lands.

## 7.2. Traffic Impact

7.2.1 The proposed development would effectively be subdivided into two separate small residential estates in the context of vehicular movement into and out of this site. The proposed access to the north, serving 10 dwellings, would be via the route of the established laneway serving the existing dwelling onto the "Sáile Road", a public road to the north of the site. The applicant has specific proposals to improve pedestrian and cycle movement on this road. This road and the access thereto are sufficient to accommodate the additional volume of traffic generated by these 10 houses. I have no traffic concerns relating to the impact of the proposed development on that public road.

7.2.2 The access to the south, serving 22 houses, would take the form of two vehicular entrances onto the estate road of Lower Springmount, a short distance from its cul-de-sac end. This estate road is more than adequate, in terms of width, alignment, structure, etc., to accommodate the volume of traffic generated by the proposed development, along with traffic generated by the established estate. I do not accept that the proposed development would cause any particular traffic hazard from the utilisation of the established estate road. With regard to parking, I first note that the proposed scheme provides ample on-site parking to accommodate the residents of that scheme. I do not consider that there would be any significant impact on on-street parking in the Lower Springmount estate by the opening of two entrances. Having regard to the topographical characteristics of this site and the desirable approach to achieve a balanced density of development, the layout of the development and consequential provision of two vehicular access points causes no particular traffic concerns.

## 7.3 Drainage and Flooding

7.3.1 I note the reports from Irish Water and from the Council's Estates Engineer and Area Engineer. I have no information to suggest that there is any concern about the public water and sewerage infrastructure to accommodate the proposed development.

7.3.2 I acknowledge the proposed attenuation measures proposed for the site. I further note the ground conditions. The vegetation associated with the prevailing ground conditions at the southern end of the site, with some evidence of soft rush, would

suggest that this lower end of the site may be prone to some degree of ponding in parts. There is, however, no information to suggest that this site is subject to flooding. I am satisfied to conclude that the control measures on surface water discharge will ensure that there will be no increased threat of flooding arising from the development of this scheme to the houses in Lower Springmount.

7.3.3 Further to the serviceability of this site and to the containment and controlled discharge of surface water, it is my submission to the Board that the proposed development poses no threat to the ecology of this area, and in particular to Commogue Marsh, which lies south of Lower Springmount estate.

#### 7.4 Impact on Boundaries

7.4.1 The proposed development does not seek to impact on the established boundary wall with Nos. 76-79 Springmount to the north-east of the site. The proposed development would provide a short section of internal roadway and a footpath to the west and south of the wall, with a small buffer between the footpath and rear boundary wall of these properties. The provision of the internal road and footpath should have no adverse structural impact on the integrity of the boundary wall, having no significant load-bearing impact and due to the road providing for no substantial groundworks along its routing at this location.

#### 7.5 Loss of Trees

7.5.1 The opening of the proposed two entrances onto Lower Springmount would result in the loss of some trees and hedgerow. This hedgerow is of no particular ecological merit but has been seen by residents as being of amenity value. The provision of access necessitates the removal of such hedgerow. I note the applicant's intent to retain existing planting other than at the proposed entrances. I also note the landscaping provisions to be made within and around the perimeter of the site. I consider that the development of the houses on this residentially zoned land is acceptable, notwithstanding the loss of hedgerow that will result.

## 7.6 Title and 'Taking-in-Charge'

7.6.1 The applicant has provided adequate information to demonstrate sufficient legal title for the making of the planning application. I note the concerns of the appellant David Galvin. The Board is not in any position to adjudicate on landownership issues and title in this instance. The issue of the alignment of the party wall at the north-east end of the site is a matter to be addressed outside of the planning appeals process.

7.6.2 A number of concerns have been addressed by the residents of Springmount relating to drainage and maintenance that fall within the remit of the local authority. These are matters beyond the determination of the proposed development now before the Board that should be for consideration by the local authority.

Note: Having regard to the site size falling very substantially below the threshold for triggering mandatory environmental impact assessment, the limited scale of the proposed development, the fully serviced nature of the proposed development, its location within the residential suburbs of Kinsale, and the nature of the receiving environment within that context, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 **Recommendation**

8.1. I recommend that permission is granted subject to the following reasons, considerations and conditions.

## 9.0 **Reasons and Considerations**

Having regard to the residential zoning provisions for the site as set out in the Bandon Kinsale Local Area Plan 2017 and to the design, character and layout of the

development proposed, it is considered that the proposed development would not adversely impact on the residential amenities of adjoining properties, would be acceptable in terms of visual impact, would not endanger public safety, and would otherwise be in accordance with the provisions of the current Local Area Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 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 drawings and details submitted to the planning authority on the 10<sup>th</sup> April, 2018, 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. Details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

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

3. Water supply and drainage arrangements, including the 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.

4. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-
  - (a) Screen walls/fences bounding and separating housing units;
  - (b) Details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
  - (c) Proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
  - (d) Details of the form, content and finishes of the play areas;
  - (e) Details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

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

5. 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.

6. 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 and vibration management measures, maintenance of boundary walls to be retained, and off-site disposal of construction/demolition waste.

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

7. 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.

8. Proposals for street name, numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs and numbers shall be provided in accordance with the agreed scheme.

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

9. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, 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 accommodation.

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

10. 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.

11. 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.

12. 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.

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Kevin Moore  
Senior Planning Inspector

26<sup>th</sup> November 2018