



An  
Bord  
Pleanála

## Inspector's Report ABP304064-19

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<b>Development</b>	Construction of 28 dwellings and associated works including hard and soft landscaping.
<b>Location</b>	Kinvara, County Galway.
<b>Planning Authority</b>	Galway County Council.
<b>Planning Authority Reg. Ref.</b>	1952.
<b>Applicant</b>	Mr. Martin Corless.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellant</b>	Rita McConn Stern.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	12 <sup>th</sup> June, 2019.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP304064-19 relates to a third-party appeal against the decision of Galway County Council to issue notification to grant planning permission for the construction of 28 dwellings and associated works at a site on the outskirts of the village of Kinvara in South Co. Galway. The grounds of appeal argue that the proposed development is contrary to local planning policy, it not appropriately zoned and that the village does not have sufficient sewage treatment capacity to cater for the proposed development. It is also argued that there are inherent problems with the layout and design of the proposal.

## 2.0 Site Location and Description

2.1. The subject site is located on the western periphery of the village of Kinvara. The 1.1 hectare site is located approximately 500 metres from the centre of Kinvara Village just north of the N67, the national secondary route which runs through the village leading westwards to North Clare. The site is roughly rectangular in shape with road frontage onto both the N67 and a smaller local road, known locally as the Green Road, which splits from and rejoins the N67 creating a small area of public open space on the northside of the N67. The subject site is vacant with the exception of a single-storey stone clad house and two small stone clad outbuildings which are located on the southern portion of the site adjacent to the public road. The remainder of the site incorporates slightly undulating lands which rise slightly to the rear (northern boundary of the site). An internal access track runs along the eastern side of the site. This access track provided access to a large industrial shed to the rear of the site which has since been demolished. There are a number of rock outcrops and piles of excavated stone scattered throughout the site, suggesting that the site may have been used previously as a quarry. Lands on either side of the site are currently being developed for housing. Lands to the east of the site are located directly opposite a small residential estate known as Nuns Orchard. The contiguous land to the east has been divided into a number of sites on which large detached dwellings are currently being developed. Lands to the immediate west of the site are also to

accommodate a small residential estate for which planning permission has been granted for 14 dwellings, Ard an Mhuilim. The first phase of this residential development has been completed comprising of six dwellinghouses adjacent to the N67 all of which appear to be occupied at present. Lands directly opposite the site on the southern side of the N67 accommodate a health centre and a detached dwellinghouse. Agricultural land is located to the north of the subject site. A small rural cul-de-sac runs in an east -west direction to the north of the site.

### 3.0 Proposed Development

3.1. It is proposed to retain the existing dwelling to the south of the site fronting onto the N67 and to construct an additional 28 dwellinghouses on the subject site. The dwellinghouses comprise of detached and semi-detached dwellings. It is proposed to construct two dwellings (Dwellings Nos. 2 and 3) to the immediate west of the existing dwelling fronting onto the N67. The remainder of the dwellinghouses are located around the periphery of the site facing inwards onto two small cul-de-sac and towards a central area of open space. Traffic calming measures are also proposed on the internal road layout. Off-street car parking is provided to the front of the dwellings and there is also a number of grouped car parking spaces along the northern edge of the main area of public open space. A total of six different dwelling units are proposed and they are set out below.

**Table 1: Schedule of Dwellings Proposed**

<b>House Type</b>	<b>Storeys</b>	<b>GFA</b>	<b>House Type</b>	<b>No. of Bedrooms</b>	<b>No of Dwellings</b>
<b>A</b>	<b>2</b>	<b>153</b>	<b>Detached</b>	<b>5</b>	<b>1</b>
<b>B</b>	<b>2</b>	<b>150</b>	<b>Detached</b>	<b>5</b>	<b>2</b>
<b>C</b>	<b>2</b>	<b>133</b>	<b>Semi-D</b>	<b>4</b>	<b>10</b>
<b>D</b>	<b>2</b>	<b>113</b>	<b>Semi-D</b>	<b>3</b>	<b>10</b>
<b>E</b>	<b>2</b>	<b>83</b>	<b>Semi-D</b>	<b>2</b>	<b>4</b>
<b>F</b>	<b>2</b>	<b>103.5</b>	<b>Detached</b>	<b>3</b>	<b>1</b>

- 3.2. All dwellings have a minimum rear garden length of 11 metres. Some of the dwellings have rear garden lengths in excess of this length.
- 3.3. One access point to the site is proposed which seeks to utilise the existing access into the site from the local Green Road.
- 3.4. The houses proposed incorporate a mixture of nap plaster finish with stone cladding on the ground floor elevation. The ridge height of the dwellings range from 7.7 to 8.8 metres in height. It is proposed to incorporate shared surfaces at the end of the two small cul-de-sac areas proposed within the layout. Screening planting is proposed along the eastern and southern boundary of the scheme.

## 4.0 **Planning Authority's Decision**

### 4.1. **Decision**

Galway County Council issued notification to grant planning permission for the proposed development subject to 19 conditions.

### 4.2. **Planning Authority's Assessment**

- 4.2.1. The planning application was lodged on 18<sup>th</sup> January, 2019. Submitted with the application is a letter of consent from the landowner giving the applicant permission to apply for planning permission for the subject development.
- 4.2.2. A report from McCarthy Keville O'Sullivan notes that the subject site is located in the 60 kph speed limit zone. It is stated that following consultations with the County Council's Road Section it was decided to incorporate the entrance serving the majority of houses on the layby area referred to as the Green Road. Only two dwellinghouses (House Nos. 2 and 3) have direct access onto the N67.

### 4.3. **Observations**

- 4.4. An observation was submitted by **Transport Infrastructure Ireland** which considers that the proposal is at variance with official policy in relation to the control of development on/affecting national roads in relation to the control of frontage

development onto national roads. It is recommended that a road safety audit should be carried out in accordance with Transport Infrastructure Ireland publications.

- 4.5. A report from the **Roads Department** stated that there was no objection subject to conditions.
- 4.6. On 4<sup>th</sup> March, 2019 unsolicited additional information was submitted on behalf of the applicant. This information comprised of a report for the purposes of a **Stage 1 appropriate assessment screening**. The report notes that the nearest European sites to the subject site at the Galway Bay Complex SAC (Site Code: 000268) and the Inner Galway Bay SPA (Site Code: 004031). It is stated however there is no connectivity between the proposed project and the Natura 2000 sites in question or any other European site listed in the potential zone of impacts. It is possible to conclude therefore that there will be no significant effects, potentially significant effects or no uncertain effects on the said Natura 2000 site were the project to proceed. On this basis it is not proposed to carry out a Stage 2 Appropriate Assessment and the production of an NIS.
- 4.7. Two no. third party objections were also received in respect of the proposal.
- 4.8. The planner's report sets out details of the planning history associated with the site and its surroundings. The report notes that there are no previous applications associated with the subject site and goes on to set out a planning history associated with sites in the vicinity. The report notes that the subject site is not located within a flood risk area and the conclusions reached in the screening report for appropriate assessment is noted. It notes that the sightline opens out onto a local road and the visibility splays of 70 metres are required in each direction at the proposed access. It is noted that the proposal is to connect to the public sewer and the public water supply mains. It is noted that there are no protected structures, recorded monuments or Natura 2000 designations on the site.
- 4.9. The planner's report notes that two objections were contained on file from third parties raising issues in relation to unzoned land, the capacity of the treatment plant and residential amenity issues. The submission from TII is also noted. The planner's report considers that the proposed layout is acceptable and there is sufficient private open space and a good mix of house sizes within the proposed development. The Planning Authority therefore has no objection to the proposed development as it is

considered that the proposal is in accordance with the proper planning and sustainable development of the area.

- 4.10. On this basis Galway County Council issued notification to grant planning permission subject to 19 conditions.

## **5.0 Planning History**

- 5.1. There appears to be no planning history associated with the appeal site other than two domestic type applications referred to below. Details of other planning applications which have been determined by the County Council in the vicinity of the subject site are set out in the local authority planner's report.
- 5.2. Reg. Ref. No. 98/1165 planning permission was granted to extend an existing house and to clad the building in stone.
- 5.3. Under Reg. Ref. 02/2222 permission was granted for the erection of a domestic garage.

## **6.0 Grounds of Appeal**

- 6.1. The decision of Galway County Council to issue notification to grant planning permission was the subject of a third-party appeal on behalf of Dr. Rita McConn-Stern of Green Lane, Kinvara. The appeal was submitted on her behalf by Vincent Farry, Planning and Development Consultants. The grounds of appeal are outlined below.
- 6.2. The grounds of appeal make reference to the local planning policy including the Kinvara Integrated Area Plan (2003) and the Kinvara Local Area Plan (2005). It notes that the subject site was located outside the built-up area of Kinvara under the Local Area Plan of 2005.
- 6.3. Reference is made to the current Galway County Development Plan (2015-2021). In particular reference is made to the core strategy of the said plan. It notes that the plan seeks to keep urban development as consolidated as possible to ensure appropriate sustainable planning. It is noted that the core strategy of the County Development Plan does to specifically list Kinvara as a town for housing allocation.

- 6.4. It is argued that the proposed development is premature pending the adoption of a new local area plan as the previous plan has now withered. It is suggested that a multi-unit development of the scale proposed should not be allowed to proceed in the absence of a specific policy objectives set out in the local plan or the county development plan. It is stated that the Kinvara Local Area Plan has expired. As such there are no statutory provisions which warrant permission being granted. It is acknowledged that the land was once zoned for residential purposes, any zoning provision under the 2005 LAP have now expired. It is noted that the Council have refrained from prolonging the lifespan of the local area plan as permitted under the provisions of 19(1)(d) of the said Act.
- 6.5. It is also argued that the proposal comprises of undesirable speculative development on agricultural land which is not being geared to address local need under the Rural Housing Policy. Reference is made to PL09/244102 where the Board refused planning permission for a small residential estate on lands to which the rural housing test applies in Kildare.
- 6.6. It is noted that the core strategy in the previous county development plan (2009-2015) explicitly envisaged that Kinvara would grow by a total of just 56 residents.
- 6.7. It is argued that the site in question is located on agriculturally designated land.
- 6.8. It is also noted that the subject site is located outside the 50 kmph speed limit and therefore outside the confines of the village centre.
- 6.9. It is noted the Department of the Environment, Heritage and Local Government opposed the quantum of residentially zoned land in the village of Kinvara under the previous LAP.
- 6.10. It is suggested that the present scheme ignores the availability of development land closer to the village core. The subject site is located over 500 metres from the village core. It is also submitted that the subject site is located within a highly scenic area and development should not take place until sites closer to the village centre are developed sequentially.
- 6.11. It is stated that an additional 67 houses have been endorsed through various planning permissions by the Council over the previous decade or so thus it is the opinion of the appellant that a sufficient quantum of development has already been built within the village.



- 6.12. It is noted that the Board refused planning permission for a housing development at Ashford, County Wicklow (PL27.241799). Permission was refused on the basis that there was a surplus of residentially zoned land in the Plan pertaining to the site in question.
- 6.13. With regard to sewage capacity it is noted that planning permission was recently granted for a wastewater treatment plant with a capacity design of 1,750 PE. The most recent census of population suggests that Kinvara currently holds a population of 734 persons. However, the census of population did not take into consideration the large number of vacant units in the site which are used for holiday accommodation. It is suggested that census of population underestimates the amount of people which visit the village during the summer period, nor did it take into consideration school children residing in the village. It is suggested that any reserve capacity associated with the wastewater treatment plant should be reserved for commercial developments within the village and for infill residential developments within the 50 kilometre speed limit.
- 6.14. It is also stated that the proposed houses are of inappropriate architectural design and that the proposed facades seem visually out of place within the settlement.
- 6.15. It is considered that the area of public open space within the site is insufficient to serve the needs of future residents and that House Nos. 24 to 28 should be omitted with the residual land given over to public open space requirements.
- 6.16. It is also suggested that the site layout should be amended to allow for a greater degree of social integration with the lands to the immediate east and west so that residents can travel from one estate to the other without having to negotiate a national secondary route.
- 6.17. It is noted that Part V of the Planning and Development Act does not apply to the proposal and on this basis, it is submitted that the site comprises of unzoned land. However, it is inappropriate for Galway County Council to grant planning permission for a scheme of this nature in the absence of providing social and affordable housing.
- 6.18. Other concerns in relation to design include the provision of direct accesses onto the N67 National Secondary Route for House Nos. 2 and 3 at a point where the 60 kmph speed limit applies.

- 6.19. It is also noted that none of the cul-de-sac provided within the scheme incorporate adequate turning areas for commercial vehicles.
- 6.20. It is also noted that the site falls short of the roadway to the north of the land and this results in the creation of strip of redundant land which is likely to be focus of anti-social and possibly a illegal activity into the future.

## **7.0 Appeal Responses**

### **7.1. Planning Authority's Response to the Grounds of Appeal**

It is noted that Galway County Council have not submitted a response to the grounds of appeal.

### **7.2. Applicant's Response to the Grounds of Appeal**

- 7.2.1. A response was received on behalf of the applicant by Future Analytics Consultant Limited. It states that the much needed houses are fully in accordance with the Government's policy to increase housing supply in accordance with the recently published document "Rebuilding Ireland". The proposed development is located in an urban location within a 5-10 minute walk of schools and other services.
- 7.2.2. It is noted that the appellant's dwelling is c.500 metres away from the subject site to the north-east fronting onto Kinvara Bay.
- 7.2.3. It is stated that the site is highly permeable and well connected to Kinvara Village. The site can be fully serviced by public infrastructure. It is stated that the subject site is located within the boundaries of Kinvara Village. The subject site was previously zoned residential in the Kinvara Local Area Plan. Details of the services available within Kinvara Village are set out in the response.
- 7.2.4. It is further noted that the village is very accessible located less than 30 kilometres from Galway City. Kinvara is also the gateway to the Burren region and all of West Clare and the associated tourist attractions.
- 7.2.5. Furthermore the application was the subject of a pre-application consultation with Galway County Council and the overall design approach was well received by the Planning Authority. Reference is also made to the grant of planning permission for adjoining residential housing on contiguous sites.

- 7.2.6. The response to the grounds of appeal goes on to set out a planning policy; making reference to the National Planning Framework, the Draft Regional Spatial and Economic Strategy and the County Galway Development Plan. The response highlighting various statements contained in the above documents which would support a planning application for residential development at this location.
- 7.2.7. A letter is provided by a local auctioneer (Appendix C) which states that the proposed scheme will provide affordable housing options of various sizes and typology for the local market.
- 7.2.8. With regard to sewage treatment capacity, it is noted that the sewage treatment plant has recently been completed for Kinvara with the first phase capacity of 1,752 which can be increased in the second phase to 2,552. It is therefore argued that the system which is nearing completion has more than sufficient capacity available to cater for the subject development.
- 7.2.9. The response to the grounds of appeal have also undertaken a population projection exercise. It is suggested that County Galway will require approximately 3,830 units by 2031 to house a growing population. Kinvara Village has a role to play in providing this accommodation.
- 7.2.10. The response goes on to assess the proposed development in the context of development management standards set out in Section 13.3 of the Development Plan. The proposed development is assessed in the context of the 23 criteria set out in the Plan.
- 7.2.11. It is stated that the proposed development is located on an infill site and is similar in terms of scale, size and massing to adjoining residential developments.
- 7.2.12. In terms of architectural treatment, it is stated that the proposed scheme is sympathetic to the surrounding landscape and will use locally sourced stone finishes.
- 7.2.13. In terms of open space provision, it is noted that over 2,000 square metres of public open space has been provided in the development and this accounts for more than 20% of the site area.
- 7.2.14. The applicant argues that social and affordable housing should not be provided on site and that Galway County Council have acknowledge that the provisions of Part V of the Planning and Development Act 2000 do not apply to the proposal.

Notwithstanding this, a letter has been provided by a local auctioneer that confirms that the scheme as a whole will provide affordable housing options to future home buyers.

- 7.2.15. An autotrack vehicle sweep path analysis has been provided demonstrating that there is sufficient space for large vehicles such as bin lorries etc. to enter the site.
- 7.2.16. Reference to any speed limit is completely irrelevant and does not form the basis of any planning control or consideration relevant to the application with the exception of sightlines at the entrance to the site. There is no objection from the Roads Department to the application before the Board. Based on the above arguments it is requested that An Bord Pleanála uphold the decision of the Planning Authority and approve planning permission for this development.

#### Appendices

- 7.2.17. A number of appendices are attached to the submission, including a letter from the Project Engineer which deals with issues in relation to the wastewater treatment plant capacity, details of vehicle turning movements and the topography of the site.
- 7.2.18. Appendix B contains an autotrack/sweep path analysis drawing indicating how larger vehicles can negotiate the culs-de-sac.
- 7.2.19. Appendix C contains a letter from a local auctioneer. It states that there is a serious demand for affordable homes for first time buyers and people looking to downsize in Kinvara. It is stated that in recent years the demand has moved significantly towards the village centre rather than one-off rural properties. The houses in question would be significantly cheaper and more affordable than previous price schemes in the area, (€250,000) and would be more affordable than similar houses in suburban areas around Galway.
- 7.2.20. Appendix D contains details of road access arrangements agreed with Galway County Council Roads Section.
- 7.2.21. Appendix E contains details of the proposed landscaping scheme to be provided.

## **8.0 Development Plan Provision**

- 8.1. The site is governed by the policies and provisions contained in the Galway County Development Plan 2015-2021. Chapter 3 relates to urban and rural housing.

- 8.2. Section 3.3.1 relates to housing location/design and densities in urban areas. It notes that appropriate locations for new residential developments include towns and villages with populations ranging from 400 to 2,000 persons. It is noted that there are a number of villages within the County that did not have local areas plans (including Kinvara) and therefore it is important that the County Development Plan address the main facets of urban housing/design. The Council's primary aim in relation to residential development is to deliver high quality sustainable living environments which are attractive, safe, vibrant and meet the needs of residents and the community.
- 8.3. The mix of housing types proposed in the area should be influenced by a range of factors including:
- Consideration of the nature of existing housing stock and existing social mix in the area.
  - The desirability of providing for mixed communities.
  - The provision of a range of house types and tenures to meet the demand.
  - The need to provide a choice of housing suitable to all age groups and persons.
- 8.4. In terms of housing density, regard will be had to the Departmental Guidelines for Sustainable Residential Development in Urban Areas (2009) and also the Design Manual for Urban Roads and Streets. It is stated that higher densities will be encouraged at appropriate locations. However, in order to attract development back to towns and villages, lower densities will be permitted in instances where it can be demonstrated that development can provide an attractive living environment especially in town centres and areas comprehensively serviced by public transport subject to appropriate design and amenity standards.
- 8.5. Section 3.4 sets out details of locations for appropriate new residential development in urban areas. Section 3.4.3 makes reference to infill development/subdivision of individual sites and town centre and brownfield sites. Centrally located sites within small towns and villages are also noted. The emphasis on design in such locations should be on achieving a good mix and quality of development that reinforces the existing urban form.

- 8.6. With regard to edge of centre sites within small towns and villages the emphasis is on achieving a successful transition from central areas to areas at the edge of smaller towns and villages. Development of such sites tend to be predominantly residential in character and given the transitional nature of such sites, the density range will be assessed depending on the characteristics of the small town/village and the subject site on a case by case basis. There will be an encouragement of appropriate housing types with a high standard of design. This form of development needs to ensure that the definition of a strong urban edge and design that creates a clear distinction between the urban area and the open countryside while discouraging ribbon development on the approaches to towns and villages.
- 8.7. Objective UH010 relates to sequential development. The development plan will endeavour to promote an orderly and phased development of residential development in accordance with the principles of the sequential approach as set out in the 2009 Guidelines. There will be a positive presumption in favour of sequential development of suitably serviced residential lands in zoned towns and villages. In unzoned towns and villages, the presumption shall be in favour of the sequential development emanating from the village core outwards.
- 8.8. Section 13.3 of the development plan sets out guidelines for residential development in urban and rural areas.
- 8.9. DM Standard 2 relates to multiple housing schemes. Housing schemes will be assessed based on the following:
- Quality of proposed layout and elevations.
  - Context sensitive.
  - Design innovation.
  - Permeability.
  - Natural features.
  - Landscaping.
  - Safety and security
  - Traffic safety and management.
  - Cycling facilities.

- Building control and fire prevention.
- Site boundaries.
- Private open space.
- Landscaping.
- Estate names and numbering.
- Housing layout assessment.
- Creche and childcare facilities.
- Overshadowing.
- Bin storage.
- Densities.

In terms of densities for neighbourhood centres (typically within 400 metres walking distance of a centre point) the development plan indicates that these areas can most appropriately accommodate low to medium densities of 15-35 units per hectare. Urban periphery outlying lands are deemed most appropriate to accommodate lower densities and 5-15 units per hectare.

#### **8.10. Guidelines for Planning Authorities on the Sustainable Residential Development in Urban Areas**

8.10.1. Chapter 6 of this document sets out guidelines in relation to small towns and villages defined of those with a population range from 400 to 5,000 persons. The general advice is to seek that new development shall contribute to compact towns and villages. It is stated that higher densities are appropriate in certain locations provided they contribute to the enhancement of the town or village. The guidelines also note that in some limited circumstances, notably where pressure for development for single homes in rural areas is high, proposals for lower densities of development may be considered acceptable at locations on serviced lands within the environs of the town or village in order to offer people, who would otherwise seek to develop a house in an unserved rural area. The option to develop in a small town or village where services are available and within walking and cycling distance. The guidelines also state that the scale of new residential schemes for development should be proportioned to the pattern and grain of existing development.

8.10.2. In terms of densities at the edge of a small town or village, the guidelines state that in order to offer an effective alternative to the provision of single housing in surrounding unserviced rural areas, it is appropriate to consider proposals for developments with densities of less than 10-15 dwellings per hectare along or inside the edge of smaller towns or villages so long as the lower density development does not represent more than about 20% of the total new planned housing stock of the small town or village in question. Such lower density development also needs to ensure the definition of a strong urban edge that defines a clear distinction between the urban and open countryside.

## **9.0 EIA Screening Determination**

Having regard to the nature of the development comprising of 28 dwellings in a small village which is considerably below the threshold for EIA set out in Schedule 5 (Part 2)(10)(b)(i), it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and that an environmental impact assessment is not required.

## **9.0 Planning Assessment**

I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the following issues to be pertinent in determining the current application and appeal before the Board.

- Status of the Kinvara LAP
- Suitability of the Subject Land for Residential Development
- Density Issues and Unit Mix
- Sewage Loading Capacity Issues
- Sequential Development
- Layout and Design Issues
- Other Issues



## 9.1. Status of Kinvara LAP

The grounds of appeal point out that the most up to date local area plan (LAP) ,for Kinvara expired in 2011 and it is argued that the former land use provisions in this document have long since been abandoned by Galway County Council. As such, any zoning provision contained in the expired plan including the residential zoning pertaining to the subject site, are no longer relevant. It appears that the grounds of appeal are in fact correct in stating that the local area plan in question has expired. While it is open to the Planning Authority under the provisions of the Act to extend the lifetime of the Plan, it appears in this instance that Galway County Council have not availed of this instrument. I note that the current County Development Plan appears to contain no reference to the policies and provisions contained in the Kinvara Area Plan for the purposes of informing future development options within the village.

- 9.1.1. It is noted however in Section 2.6.6 of the Plan that Kinvara is designated as “other villages”. The Plan notes that such villages have strong settlement structures and have the potential to support additional growth offering alternative living option for those people who do not wish to reside in the larger key towns and do not meet the housing need requirements for rural areas. The wastewater treatment facilities in some of these towns/villages require investment and therefore it is considered that their inclusion at this level in the hierarchy will provide a plan led approach to securing this investment in the future.
- 9.1.2. I also note Objective UH010 which relates to sequential development. In un-zoned towns and villages, the presumption shall be in favour of the sequential development emanating from the village core outwards. There is an implicit recognition that development will take place in towns and villages where no up-to-date statutory LAP exists.
- 9.1.3. In conclusion therefore while I acknowledge that there is no current statutory local area plan for the village of Kinvara on the basis that the previously approved plan in 2005 has now since expired. I do not consider that this precludes future residential development within the town until such time as a local area plan has been approved. The development plans makes it very clear that the village in question has a strong settlement structure and has the potential to support additional growth. In

accordance with Objective UH010, any such development should take place in a sequential manner from the village core outwards. In fact, the County Plan readily acknowledges that Kinvara provides an alternative living option for people who do not meet the housing need requirements for rural areas and who do not wish to reside in larger key towns. The absence of a local area plan for the village in question does not in my view preclude the provision of residential development until such time as a plan is being adopted as suggested in the grounds of appeal. Rather I would consider it more appropriate that the Board would evaluate any proposal on its merits and in accordance with the proper planning and sustainable development of the area until such time that a plan is approved for the village.

## **9.2. Suitability of the Subject Land for Residential Development**

- 9.2.1. There are a number of material considerations which the Board in my opinion should take into consideration in determining whether or not the subject lands are suitable to accommodate residential development as proposed. While I fully acknowledge that the previous LAP for the village has now expired, the zoning status of the lands of the previous LAP is nonetheless in my opinion a material consideration in determining whether or not the subject lands are suitable for residential development. Both the appellant in the grounds of appeal and the applicant in response to the grounds of appeal acknowledge that the lands in question were previously zoned for residential development. The appellant in the grounds of appeal argues that there was an overprovision of zoned land in the previous LAP and the subject site formed part of this overprovision of zoned land. I acknowledge that large swathes of land in the periphery of the village were zoned residential development and the amount of land zoned was probably in excess of that required under the lifetime of the plan. Nevertheless, the subject site was deemed suitable for development due to its location within the village and its ability to be serviced. The Board will also note (see Map 3 of page 12 of the grounds of appeal) that the subject site was not the most peripheral of lands zoned for residential development within the village. In fact, the Board will note that lands to the immediate east of the subject site were zoned enterprise under the LAP whereas lands further east towards the village centre were zoned “village centre” (residential). In this regard it can be reasonably argued that the subject site formed the most logical sequential outward expansion of residential development from Kinvara Village in a westerly direction.

- 9.2.2. Furthermore, subsequent to the adoption and expiry of the said local area plan lands to both the immediate east and immediate west of the subject site have been developed for residential purposes. The low-density Nuns Orchard residential development is located on lands to the immediate east of the subject site in close proximity to the village centre whereas 14 new houses, six of which have already been built, are proposed on lands to the immediate west of the subject site. It can be reasonably argued in my view that the proposed development therefore constitutes an infill site which would be most appropriately developed for residential purposes.
- 9.2.3. The Board will also note from the grounds of appeal (see section below) that Kinvara have recently benefitted from the provision of a new wastewater treatment plant which ensures that the subject site can be readily serviced in terms of wastewater treatment. The Kinvara wastewater treatment plant has a capacity for 1,750 PE in its first phase. Having regard to the fact that the most recent census of population recorded a population of 734 persons for the village of Kinvara. There can be no doubt that there is sufficient capacity within the wastewater treatment plant to cater for the additional waste generated by the proposed development.
- 9.2.4. Finally, I would refer to the policies contained in the recently adopted National Planning Framework which seeks to consolidate new development within the footprint of existing built up areas. I have already concluded that the site constitutes an infill development and therefore it is appropriate that any future residential development to be located within the confines of the village is primarily directed to infill sites within the existing footprint of the village. Section 2.6 of the framework seeks to ensure compact and sustainable growth within towns and villages. It specifically states “a preferred approach would be compact development that focuses on reusing previously developed “brownfield” land building up infill sites, which may not have been built on before and either reusing or developing existing sites and buildings”. I consider that the subject site, which appeared to be in use as a former quarry, would fall in the above category and therefore it’s development would be fully in accordance with the National Framework Plan.

### 9.3. **Density Issues and Unit Mix**

- 9.3.1. Although not specifically referred to in the grounds of appeal, it is nevertheless appropriate that the Board in adjudicating on the above application, take into

consideration the issue of density. As referred to above the National Planning Framework seeks to ensure that new residential development particularly in existing built up areas which can avail of infrastructural services would be developed at higher more sustainable densities. The National Planning Framework however does not set out prescriptive guidelines in respect of densities for smaller villages and settlements such as Kinvara. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009 suggest in Chapter 6, which relates to Small Towns and Villages, that density standards at the edge of small towns and villages should be generally less than 15-20 dwellings per hectare. If the subject lands in question were classed as being located at the 'edge of the centre of the village', densities in the range of 20 to 35 dwellings per hectare are deemed to be appropriate. Including the existing dwelling which is to be retained on site it is proposed to provide 29 dwellings on a 1.1 hectare site. The density provision proposed under the current application equates to approximately 26 units per hectare which in my view constitutes an appropriate density for a site located at the edge of a small town or village as espoused in the Guidelines. The proposed density is also reflective (albeit slightly higher) than the densities of the adjoining two residential developments on either side of the subject site. The proposed density therefore in my view strikes an appropriate balance between being generally reflective of the prevailing suburban residential density of the periphery of the village centre while at the same time increasing densities as espoused in more recently adopted NPF strategy.

- 9.3.2. In terms of unit mix, I note that the overall scheme is relatively small at less than 30 units and therefore there is less opportunity to provide a wide range of dwelling types and mixes. Notwithstanding this, I note that a total of six different house types are proposed ranging in gross floor area from 83 square metres to 153 square metres and ranging in size from 2 to 5 bedrooms. This in my view represents an appropriate mix of units on offer.

#### 9.4. **Sewage Loading Capacity Issues**

- 9.4.1. The grounds of appeal suggest that sewage capacity may present a problem in the longer term. The argument is primarily predicated on the basis that the most recent census of population, recorded 734 persons being residents within the village on 6<sup>th</sup> April 2016. It is suggested that the actual population of the village may be

underrepresented on the basis that the census was not undertaken at the height of the summer season and the census night expressly excludes a number of children attending school in the village which is estimated to be up to 800 children.

9.4.2. While I acknowledge that the census was not undertaken during the height of the tourist season the census in 2016 did not coincide with the Easter holiday period and therefore there is no reason to suggest that the census was taken outside school time and that schoolchildren were not included for the purposes of the census.

9.4.3. I consider that there is no basis for the argument which suggests that there was less than sufficient capacity in the newly operational wastewater treatment plant to cater for the development in question. The first phase of the treatment plan provides for a capacity of 1,750 whereas the current population of Kinvara is only 734 persons. There is therefore capacity to accommodate an additional c1,000 persons. Even where the village is at full capacity during the summer months, there is in my view ample residual capacity in terms of wastewater treatment to cater for the c.60 or 70 additional persons which will be accommodated through the above development.

## 9.5. **Sequential Development**

9.5.1. The grounds of appeal also suggest that it is inappropriate to accommodate the proposed development at the periphery of the village without first investigating the potential to secure developed sites closer to the village centre.

9.5.2. I have argued above that the proposed development constitutes an infill development between two sites which have recently been developed for residential development or is in the process of being developed for residential development. Kinvara Village is a compact village and there are no opportunities for large scale residential development within or adjoining the village centre. While there may be some redevelopment opportunities within the village, such opportunities may be more appropriately developed for commercial/town centre uses rather than purely residential development. The development of smaller sites within the village centre as suggested in the grounds of appeal (see photograph 7 of appeal page 19) would not in my view represent a practical way of achieving on delivering housing development on a comprehensive and sustained basis. I do not consider it appropriate that planning permission would be refused on the basis that there is an

availability of sites close to the village centre which can be developed sequentially before the development of the site in question.

## 9.6. **Layout and Design Issues**

- 9.6.1. The grounds of appeal, while acknowledging that design is highly subjective, argue that the architectural treatment of the proposed houses is out of character with the type of housing which is characteristic in small rural villages. The design of the dwellings is typically suburban and are in my view appropriate for the outskirts of Kinvara Village. They are reflective and characteristic of small-scale infill suburban type housing which is apparent in the existing modest scale residential suburban type developments in the vicinity including 'Nuns Orchard', 'Convent Park' and 'Arvough' in the vicinity. The proposed houses comprise of two-storey conventional style housing with nap plaster finish together with local stone cladding. They are both characteristic of existing housing developments in the area and are appropriate for the site in question.
- 9.6.2. It is also argued that the public open spaces to be provided within the site is insufficient to meet the needs of future residents and in this regard House Nos. 24 to 28 should be omitted and the residual land given over to public open space. The proposed open space is central and well overlooked within the scheme. It also incorporates dimensions (c.20m x 40m) to ensure that the open space provides a usable, functional 'kickabout' area. Surrendering an additional five houses for public open space requirements would be contrary to national policy which seeks to maximise densities at sustainable levels within new housing schemes particularly on infill sites in order to assure more sustainable compact development going forward.
- 9.6.3. With regard to pedestrian linkages between schemes, I acknowledge that greater effort could have been incorporated to ensure that more effective pedestrian linkage and permeability between schemes so as to provide more effective linkages with adjoining schemes specifically with the contiguous scheme to the west. The layout of the newly constructed dwellings along the eastern boundary of the site would not lend itself to effective pedestrian linkage as the rear gardens of the recently constructed dwellinghouses to the east all back onto the eastern boundary of the

site. I do acknowledge however that there are good quality pedestrian linkages through the areas of open spaces proposed.

- 9.6.4. The grounds of appeal also express concerns that two of the dwellinghouses (Houses Nos. 2 and 3) incorporate direct entrances onto the N67 Secondary Route and this is contrary to national policy. Similar concerns were expressed by Transport Infrastructure Ireland. The proposed accesses in question are located between the 50 and 60 kilometre speed limits within the town. They are also located along a stretch of road where numerous direct accesses serving local dwellinghouses exist. Having regard to the fact that the site is located within the built-up area of the town and that there are numerous precedents for similar type direct accesses along this section of the roadway, I do not consider that planning permission should be refused for this reason.
- 9.6.5. With regard to the issue of turning areas the grounds of appeal argue that insufficient areas have been allocated for the turning of large vehicles including bin lorries etc. at the end of the cul-de-sacs proposed. The incorporation of turning areas would result in the surrendering of additional space within the street reserve in lieu of footpaths, front gardens and open space. The applicant has indicated in its response to the grounds of appeal, by way of an indicative sweep path analysis, that there is sufficient space within the existing road layout to enable large vehicles to manoeuvre in and out of the cul-de-sac without the need to provide larger turning areas.
- 9.6.6. The grounds of appeal suggest that the setback of the northern boundary from the local road which runs in an east-west direction to the north of the site constitutes a poor layout and will give rise to anti-social behaviour. It is acknowledged that the northern boundary of the site is setback from the roadway in question. However, there is no evidence suggesting that the land along the southern side of the roadway in question is within the ownership of the applicant and therefore the applicant may not have sufficient legal interest to develop the site up to the roadway along the northern boundary. The roadway in question ends in a cul-de-sac and does not accommodate any residential accommodation other than 1 one-off dwelling located to the north-east of the site. I would not accept the argument that the stepping back of the proposed development from the local cul-de-sac would in any way give rise to or exacerbate anti-social activity in the area.

## 9.7. Other Issues

- 9.7.1. It is suggested in the grounds of appeal that the application before the Board should be the subject of Part V provisions.
- 9.7.2. Section 96(1) of the Act states '*that where a development plan objective requires that a specified percentage of any lands zoned purely for residential use or for a mixture of residential and other uses be made available for housing referred to in Section 94(4)(a)*' (social and affordable housing). I consider that the lands in question are not zoned for development as the Kinvara LAP has expired. As a result, there is no official zoning designation associated with the subject site. As the lands in question are not governed by a specific zoning, either for residential or mixed use development, I would consider it ultra vires that the Board would apply the provisions of Section 96(1) of the Planning Act in respect of social and affordable housing.

## 10.0 Conclusions and Recommendation

Arising from my assessment above I consider that the Board should uphold the decision of the Planning Authority in this instance and grant planning permission for the proposed development.

## 11.0 Appropriate Assessment

I note that a report for the purposes of Appropriate Assessment screening, was submitted as unsolicited additional information on the 4<sup>th</sup> March, 2019. It notes the European sites located within a 15 kilometre distance of the proposed development. A total of 27 sites were identified. The closest sites identified (c.370 to 380 metres away) were the Inner Galway Bay SPA and the Inner Galway Bay Complex SAC both of which are located to the north-east of the subject site. I am satisfied that the subject site is located sufficient far away from the Natura 2000 sites in question to ensure that no adverse impact arises during the construction phase to the qualifying interests associated with the Natura 2000 sites identified. There is no hydrological connectivity between the subject site and the Natura 2000 sites referred to. I am therefore satisfied that the proposal will not pose a risk to any of the qualifying interests associated with the Natura 2000 sites during the construction phase. During the operational phase the only discharge arising from the proposed project will be



wastewater and any such wastewater will be connected to a municipal sewer and treated at the Kinvara wastewater treatment plant prior to any discharge into the Bay. On this basis I am satisfied that the proposed development will not give rise to any adverse impact on the qualifying interests associated with the Inner Galway Bay SAC or SPA. Therefore, having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **12.0 Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

## **13.0 Reasons and Considerations**

It is considered that the proposed residential development, subject to conditions set out below, would not adversely affect the residential or visual amenities of the area, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **14.0 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. Details of the materials, colours and textures of all the external finishes to the proposed dwellings 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 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.

4. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

**Reason:** in the Interests of orderly development

4. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

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

5. Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. The location and layout of on street and off street car parking spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure adequate off-street parking provision is available to serve the proposed development.

7. 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 house.

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

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. All existing over ground cables shall be relocated underground as part of the site development works.

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

9. All screen walls shall be two metres in height above ground level, constructed in brick to match the brick used in the dwelling constructed in concrete block, and shall be capped, and rendered on both sides in a finish that matches the external finish of the dwellings.

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

10. All rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

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

11. 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.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

12. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

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

13. 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.

14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

15. During the construction phase of the proposed development the following best construction practices shall be employed to prevent any significant adverse impact on nearby European sites:
  - (a) Works such as soil excavation, soil depositing or soil stripping will not be conducted during or immediately following periods of heavy or prolonged rainfall.

- (b) All stockpile areas of sand, gravels and soils should be stored on level terrain and shall be covered during heavy rainfall periods in order to prohibit the mobilisation of sediments.
- (c) Work with concrete shall be done during dry conditions for a period sufficient to cure the concrete (at least 48 hours).
- (d) Concrete pours shall be in contained areas.
- (e) Washing out of concrete trucks should not be permitted within the site and should be conducted in hardstanding areas.
- (f) All petroleum products to be bunded during construction phase of development.
- (g) The developer shall take appropriate measures to ensure that any materials brought on site are free of invasive species such as Japanese Knotweed, Gunnera or Rhododendrum.

**Reason:** In the interest of protecting the integrity of European sites.

16. The developer shall pay to the planning authority a financial contribution of €79,534 (seventy-nine thousand five hundred and thirty-four euro) 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. The application of any 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 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.

17. 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 of roads, footpaths, watermains, drains, 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 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 of the development.

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Paul Caprani,  
Senior Planning Inspector.

12th July 2019.