



An  
Bord  
Pleanála

## Inspector's Report ABP-304230-19

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<b>Development</b>	To excavate existing spoil material, to trunk up with clean building rubble, and to construct a car park.
<b>Location</b>	Castlemaine Road, Camp, Caherweesheen, Tralee, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/1224
<b>Applicant(s)</b>	Rybuck Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 3 conditions.
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Michael Horgan, Lakes and Rivers of Kerry Salmon and Trout Conservation and Protection Association
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> July 2019
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located in the south-eastern outskirts of Tralee, c. 1.7 km from the town centre. This site lies in an area of mixed use that accompanies Castlemaine Road (N86) on its approach to the town from the roundabout between the Tralee By-pass (N70) and this Road. Thus, to the north of the site lies a modern two-storey unit that is being used by Aspen Grove Solutions Ltd, an IT business, and beyond this unit lies a Lidl foodstore. On the opposite side of Castlemaine Road, lies a restaurant and filling station. To the south and west of the site lie the Cois Abhainn and Bruach Na hAbhainn housing estates.
- 1.2. The site itself is of regular shape and it extends over an area of 0.724 hectares. This site is composed of old spoil material and it is presently vacant and unused. The site abuts the site of the aforementioned IT business to the north, from where it is accessed. To the east it abuts an unnamed stream, which flows into the River Lee, and which on the site side is accompanied by a line of mature deciduous trees. To the south and east, the site abuts estate roads to the first of the two housing estates cited above. The northern boundary to the site is denoted by means of security fencing and temporary steel wire fencing and the southern and western boundaries are denoted by means of timber railings. The eastern boundary is unenclosed, although, on the far side of the stream, steel mesh fencing accompanies the western side of the Castlemaine Road.

## 2.0 Proposed Development

- 2.1. The proposal would entail the excavation of the existing spoil material (18,000 cubic metres) from the site and its replacement with clean building rubble (18,000 cubic metres). The after use of the greater portion of the site would be a 104-space car park with a grit surface. This car park would be accessed from Castlemaine Road via the access point shared by Lidl foodstore and Aspen Grove Solutions Ltd. The means of access would run through the existing car park that surrounds the unit occupied by Aspen Grove Solutions Ltd.
- 2.2. Under further information, the applicant clarified that the proposed car park would be used as an overspill one for Aspen Grove Solutions Ltd and that the southern portion

of the site would remain undeveloped for the time being, although it could be the site of a building for Aspen Grove Solutions Ltd in the future.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following receipt of further information, permission was granted subject to 3 conditions one of which requires that the car park is only used by the adjacent Aspen Grove Solutions development.

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

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

Following information requested with respect to the following:

- Clarification of use of car park, i.e. would it be used by Aspen Grove Solutions?
- What would the southern half of the site be used for?
- What quantity of spoil would be removed and over what time period?
- What quantity of builder's rubble would be imported and over what time period?
- Would ground levels be increased?
- What surfacing material would be applied?
- Would public lighting be installed?
- Details of boundary treatments.

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

- TII: No observations.
- County Archaeologist: No recorded monuments in the vicinity, no mitigation required.
- Fire Authority: No objection.

- Operations: Following receipt of further information, no objection, subject to conditions.

## 4.0 Planning History

Adjoining site to the north

- 13/606: Change of use of part of premises from commercial garage to offices: Permitted.
- 16/984: Applicant Aspen Grove Solutions: To permit change of part of premises on the GF and FF from a workshop to offices + To retain offices and a gym on GF and offices and a store on FF: Permitted.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Tralee Municipal District Local Area Plan 2018 – 2024 (LAP), the site is shown as lying outside the Tralee Town Boundary and in an area zoned C2.1, industrial/enterprise/employment. The relevant land use matrix shows that car parks are deemed to be “open for consideration” under this zone.

Under Section 13.5 of the Kerry County Development Plan 2015 – 2021 (CDP), offices are shown as requiring to be accompanied by 3 car parking spaces for every 100 sqm of floorspace.

Under Objectives RD-13, 14, and 16, the CDP undertakes to promote sustainable modes of transportation and the preparation of workplace travel plans.

### 5.2. Natural Heritage Designations

- Tralee Bay and Magharees Peninsula, West to Cloghane SAC and pNHA (site code 002070)
- Tralee Bay Complex SPA (site code 004188)

### 5.3. EIA Screening

Under Items 10(b)(ii) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where a car park would be constructed providing more than 400 spaces, unless it would be incidental to the primary purpose of a development, or where urban development would involve greater than 10 hectares in a built-up area, the need for a mandatory EIA arises. The proposal is for the development of a car park with 104 spaces on a 0.724-hectare site. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site is a flood plain.
- The appellant's dwelling house at No. 2 Upper Cloonbeg has been flooded several times in his life.
- Most of the flood plane in the locality of the site has been built, thereby heightening the risk of flooding elsewhere.
- Examples of such buildings are cited.
- Do Aspen Grove Solutions really need the proposed car parking spaces?
- The site provides a habitat for curlew and snipe, which would be lost under the proposal.
- Does the proposal comply with the LAP?

### 6.2. Applicant Response

- In relation to the first three grounds of appeal, no change in site levels is proposed and, as the site would be trunked and gritted, existing underground

voids would be filled, and so it would sustain more flood waters than at present.

- In relation to the fourth ground, this matter is for the Planning Authority to address.
- In relation to the fifth ground, Aspen Grove Solutions is an expanding IT business that indeed needs further car parking spaces to serve its staff and visiting clients.
- In relation to the sixth ground, there is no evidence that the site affords the stated habitat. Given the proposed trunking and gritting, the opportunity for flora and fauna to return would exist in the future.
- In relation to the seventh ground, the proposal would be compliant.

### **6.3. Planning Authority Response**

None.

### **6.4. Observations**

None.

### **6.5. Further Responses**

None.

## **7.0 Assessment**

7.1. I have reviewed the proposal in the light of the CDP and the LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that the current application/appeal should be assessed under the following headings:

- (i) Land use and car parking,
- (ii) Traffic and access,
- (iii) Water, and
- (iv) Screening for AA.

### **(i) Land use and car parking**

- 7.2. Under the LAP, the site is shown as lying outside the Tralee Town Boundary and in an area zoned C2.1, industrial/enterprise/employment. The relevant land use matrix shows that car parks are deemed to be “open for consideration” under this zone.
- 7.3. Notwithstanding the fact that the site is shown as lying outside the Town Boundary, it lies within a built-up area that is continuous with the town. The site itself extends over an area of 0.724 hectares and it is accessed from the N86. It thus represents an attractive one for employment use and so *prima facie* I am concerned that its proposed redevelopment for an after-use as a car park would be a sub-optimal outcome. In this respect, I note that the applicant has indicated that the southern portion of the site, which would not be laid out as a car park under the current proposal, may in the future be developed for employment use. However, this proposal is for the provision of a car park only over the majority of the site.
- 7.4. The applicant stated, under further information, that the adjacent IT business, Aspen Grove Solutions Ltd, would use the proposed car park as an overspill one for its staff and visitors. Floor plans submitted under application 16/984 indicate that this firm’s adjacent two-storey unit is in use as offices. Under Section 13.5 of the CDP, offices are shown as requiring to be accompanied by 3 car parking spaces for every 100 sqm of floorspace. The floorspace of the unit in question is 1962 sqm and so c. 59 spaces would be an appropriate level of provision under this standard. The submitted site layout plan for the current application shows an existing 103 spaces, i.e. an over provision of 44 spaces. The proposed car park would have 104 spaces and so it would double the existing provision and result in an over provision of 148 spaces.
- 7.5. While the CDP does not make explicit whether its car parking standards represent minimum or maximum figures, the Board will be aware that for some time now it has been accepted practice to regard such standards as maximums in a bid to ensure that the over-provision of car parking spaces at workplaces is avoided with any associated “supply-side effect”. Such capping of spaces, also incentivises the use of alternative sustainable modes of transport, such as walking and cycling, the use of public transport, and car sharing, in accordance with CDP Objectives RD-13 and RD-14.



7.6. I conclude that the proposed redevelopment of the site, which is zoned for employment use, for a car park would be a sub-optimal use of this site. I also conclude that, as the prospective user of this car park is already amply provided with car parking, under the relevant CDP standards, the proposed car park would accentuate existing overprovision and so be contrary to the proper planning and sustainable development of the area.

**(ii) Traffic and access**

7.7. The proposal would generate traffic during both construction and operational phases. This proposal would entail the removal of 18,000 cubic metres of spoil material and the importation of the same volume of clean building rubble. Thus, appreciable numbers of trips would occur during the construction phase. Likewise, during the operational phase, trips would be likely to occur during peak periods.

7.8. The applicant has not quantified the numbers of trips that would occur during the construction and operational phases, although it has stated that the projected length of the construction phase would be 2 – 4 years. The length of this phase suggests that the replacement site fill material would be tipped over an extended period with potentially adverse amenity implications for adjacent dwelling houses to the west.

7.9. During my site visit (Friday mid-afternoon on 19<sup>th</sup> July 2019), I observed that the portion of Castlemaine Road (N86) off which the site would be accessed is heavily trafficked and that the access point from this national secondary road is presently shared by the Aspen Grove Solutions Ltd, which is the prospective user of the proposed car park, too, and a Lidl foodstore. (A right-hand turning lane is laid out within Castlemaine Road to correspond with this access point and the Lidl foodstore is also accessed via a road to the north that serves the Bruach Na hAbhainn housing estate). This portion of the said Road is subject to a 60 kmph speed limit and the sightlines from the access point in question are good.

7.10. In the light of the foregoing paragraphs, I am concerned that the applicant has not undertaken a traffic assessment of the proposal and so no information is available, for instance, of the capacity of the junction between Castlemaine Road and the access point to accommodate the envisaged additional traffic.

7.11. Objective RD-16 of the CDP promotes the use of workplace travel plans in line with the Government's promotion of workplace mobility management plans. The applicant

has not referred to such a plan and so the prospective user of the proposed car park has not outlined how it would seek to encourage alternatives to the use of the car amongst its workforce.

7.12. I conclude that, in the absence of a traffic assessment of the proposal, the applicant has failed to demonstrate that the proposed access point would be capable of handling, satisfactorily, traffic movements generated by this proposal. The prolonged duration of the construction period may have adverse implications for the amenities of adjacent dwelling houses to the west of the site. I also conclude that, in the absence of a mobility management plan from the prospective user of the proposed car park, it would be premature to accede to the current proposal.

### **(iii) Water**

7.13. The site is bound on its eastern side by an unnamed stream. The proposal would entail an on-site surface water drainage system, which would discharge to this stream. Details of this system do not show an oil interceptor or any attenuation tank, which may be necessary to manage the rate of stormwater run-off from the site.

7.14. Insofar as the proposal would entail the removal of spoil material to a depth of 3m and its replacement with clean building rubble to the same depth, a risk would be posed to the quality of water in the adjoining stream. The applicant has not given any details of the type of materials comprised in the existing site and it has not outlined the measures that would be undertaken during the construction period to minimise the risk to the said quality of water.

7.15. The appellant has stated that the site lies within a flood plain. The applicant has responded by stating that no change in site levels would result and that, as the site would be “trunked and gritted”, the proposal would be flood risk neutral or better. I note that the site is vacant and unused and so down to vegetation at present. I note, too, that the proposed after-use is that of a car park, which clearly would represent the introduction of an active land use onto the site. Accordingly, the flood risk pertaining to the site needs to be considered under a scenario entailing this use.

7.16. The OPW's flood maps website<sup>1</sup> shows the site as being at risk of both fluvial and coastal flooding, i.e. high probability = AEP of 10%. In the case of the former type of

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<sup>1</sup> The website indicates that the locality of the site is under review for the purpose of flood risk assessment.

flooding, the majority of the site would be at risk, and, in the case of the latter type of flooding, the eastern boundary of the site would be at risk.

- 7.17. Under the Planning System and Flood Risk Management Guidelines, car parks are not included in Table 3.1, which sets out a classification of vulnerability of different types of development. In these circumstances, the Guidelines advise that car parks should be considered “on their merits”. I note that “local transport infrastructure” is classified as being less vulnerable development and so I consider that it would be appropriate for the proposed car park to be thus classified.
- 7.18. Under the aforementioned Guidelines, the site would be categorised as being in Flood Zone A, i.e. AEP of greater than 1%. Under Table 3.2, less vulnerable development proposed for sites categorised as Flood Zone A need to be the subject of the Justification Test. Under revised Section 5.28 of these Guidelines, insofar as the proposed car park could be regarded as an ancillary use to that of the adjoining employment use, i.e. the IT business of Aspen Grove Solutions Ltd, the need for this Test may be capable of being waved. A flood risk assessment would nonetheless be necessary.
- 7.19. I conclude that the applicant has failed to assess the risk posed by the proposal to water quality. I conclude, also, that it has failed to assess the flood risk that would be posed to the proposed car park. In these circumstances, it would be premature to accede to this proposal.

#### **(iv) Screening for AA**

- 7.20. The site is neither in nor beside to a Natura 2000 site. An unnamed stream passes along the eastern boundary of this site and it flows into the River Lee, which in turn flows into Tralee Bay, which is designated both a SAC<sup>2</sup> and a SPA<sup>3</sup>. There is thus a clear source/pathway/receptor route between the site and these Natura 2000 sites, some 2.45 km away. The Conservation Objectives for the SAC in question are to either restore or maintain the favourable conservation condition of the qualifying interests of this SAC and the Conservation Objectives for the SPA in question are to maintain the favourable conservation condition of the qualifying interests.

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<sup>2</sup> Tralee Bay and Magharees Peninsula, West to Cloghane SAC (site code 002070).

<sup>3</sup> Tralee Bay Complex SPA (site code 004188)

- 7.21. Given the above cited hydrological route, I consider that the applicant should have undertaken a Stage 1 Screening Exercise for Appropriate Assessment. In the absence of such an exercise and in the absence, too, of any details of the materials presently composed in the site and how the applicant proposes to safeguard the water quality of the aforementioned unnamed stream, especially during the excavation of these materials, there is a dearth of information upon which to draw in undertaking a Stage 1 Screening Exercise for Appropriate Assessment.
- 7.22. I conclude that, due to insufficient information, I am not in a position to undertake a Stage 1 Screening Exercise for Appropriate Assessment.

## **8.0 Recommendation**

- 8.1. That the proposal be refused.

## **9.0 Reasons and Considerations**

1. Having regard to the C2.1 industrial/enterprise/employment zoning of the site in the Tralee Municipal Local Area Plan 2018 - 2024, its redevelopment to provide a car park would represent a sub-optimal outcome for a site that is well-placed for future employment usage.

Having regard to the car parking standards set out in the Kerry County Development Plan 2015 – 2021, the prospective user of the proposed car park already has a car park to the north of the site, which exceeds these standards in the number of spaces contained therein, and so the additional spaces now envisaged would cause the level of overprovision to increase, markedly.

Accordingly, to accede to the current proposal would frustrate the realisation of the employment potential that the site could afford, and it would exacerbate the overprovision of car parking spaces and thereby be contrary to Objective RD-14 of the County Development Plan, which promotes the adoption of sustainable modes of transport. The proposal would thus be contrary to the proper planning and sustainable development of the area.

2. Having regard to the traffic that would be generated by the proposal during both its construction and operational phases and having regard to the proposed means of access to the site, which would utilise an existing shared access point off the heavily trafficked Castlemaine Road (N86), the applicant has failed to demonstrate by means of a traffic assessment that the junction between this access point and the N86 would be capable of handling, satisfactorily, the additional traffic that would be generated.

Having regard to Objective RD-16 of the Kerry County Development Plan 2015 – 2021, the applicant has not submitted, on behalf of the prospective user of the proposed car park, a workplace travel plan. In the absence of such a plan, the applicant has failed to demonstrate that non-car-based travel to work options have been either explored or promoted

Accordingly, to accede to the proposal would be premature, as it could jeopardise good traffic management and it could frustrate the adoption of non-car-based travel to work options, and so be contrary to the proper planning and sustainable development of the area.

3. Having regard to the importance of ensuring the maintenance of water quality in the stream that passes to the east of the site, the applicant has failed to submit details of the materials currently comprised in the site or the measures that would be undertaken to ensure that the water quality of the said stream is safeguarded during the removal of these materials and their subsequent replacement. Accordingly, to accede to the proposal would be premature, as it could jeopardise the water quality of the stream that passes the site, and so be contrary to the proper planning and sustainable development of the area.
4. Having regard to the identified high probability of fluvial and coastal flooding attendant upon the site, which places it in Flood Zone A under the Planning System and Flood Risk Management Guidelines, and to the less vulnerable classification of the proposed car park development under these same Guidelines, the applicant has failed to demonstrate by means of a flood risk assessment that the proposal would not heighten the flood risk attendant upon the site and by extension the surrounding area. Accordingly, to accede

to the proposal, in these circumstances, would be premature, and so it would be contrary to the proper planning and sustainable development of the area.

5. Having regard to the hydrological link between the site and the Natura 2000 sites in Tralee Bay, the applicant has failed to submit sufficient information with respect to existing materials comprised in the site, the risk to water quality in the stream passing the site, and the likelihood of significant effects upon the Conservation Objectives of the said Natura 2000 sites to facilitate the Board in conducting a Stage 1 Screening Exercise of the proposal for the purposes of Appropriate Assessment. Accordingly, to accede to the proposal, in these circumstances, would be premature, and so it would be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

1<sup>st</sup> August 2019