



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308796-20

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<b>Development</b>	Permission to construct 36 houses (19 detached 14 Semi-detached, 3 Terraced houses Change to previously permission under planning reg 08/1797 and 08/91797).
<b>Location</b>	Camp, Ballyseedy, Tralee, Co Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	2070
<b>Applicant(s)</b>	Dromjam Ltd and Mut 10 Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Crystal Fountain Residents.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> March 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site with a stated area of 3.0841 hectares located circa 2km to the south of Tralee Town Centre. The site forms part of an unfinished housing and neighbourhood centre development located on the outskirts of Tralee Town. The site is located on relatively flat ground and is bounded by an on-going and partly occupied residential development to the east. Access roads and services have been partially completed on the appeal site with access from the local road to the north and a separate access from the N70 National Secondary road to the west. Open agricultural fields adjoin to the south and Crystal Fountain originally developed as a holiday home development but now largely apparently permanently occupied adjoins to east. Opposite on the western side of the N70 is low density residential development in ribbon development form.

## 2.0 Proposed Development

- 2.1. The proposal involves permission for the construction of a total of 36 dwelling units comprising:

19 no detached dwellinghouses

14 no semi-detached dwellinghouses,

3 no terraced houses

Permission also for completion of access road landscaped open space areas, connect foul sewer main to existing main and storm sewer to existing attenuation area and all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1 Kerry County Council decided to materially contravene its development plan to grant permission at its meeting of 2<sup>nd</sup> November 2020 in accordance with the provisions of Section 34(6) of the Planning and Development Act 2000.

3.1.2 Notification of the decision to grant permission issued on 3rd November 2020. Attached to the notification of the decision to grant permission were 21 conditions including the following of particular note:

- Condition 2 Bond €250,000
- Condition 4. Development Contribution €137.836.
- Condition 6. Notwithstanding the provisions of the Planning and Development Regulations 2001 as amended no part of the proposed 36 dwelling units shall be used for the provision of overnight commercial guest accommodation without a prior grant of permission.
- Condition 7. Archaeological Monitoring of all grounds disturbance.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

3.2.1.1 Initial Planner's countersigned by the Acting Senior Planner sought additional information to include clarification regarding the number of proposed units, a detailed site layout, roads proposals, services layout, an appropriate assessment screening report, clarification of proposed house types. Proposals were also requested in respect of any works to the Caherwisheen Stream.

3.2.1.2 Senior Executive Engineer's Planning report, countersigned by the Senior Planner, to the meeting of Tralee Municipal District Council of November 2020 recommends instigation of the material Contravention process as the site is categorised as a rural area under strong urban influence the County Development Plan. The report asserts that the development is a well-considered proposal to complete a partially constructed residential scheme on the southern outskirts of Tralee. The density and layout of the proposal is appropriate to the location of the site and is consistent with the existing pattern of residential development in the vicinity.

### 3.2.2. Other Technical Reports

3.2.2.1 County Archaeologist report notes that previous archaeological testing on the site in respect of planning applications 18/200 and 08/1797 found significant prehistoric

archaeology comprising pits, postholes and linear features as well as prehistoric pottery and two stone axeheads. Report recommends a condition requiring archaeological monitoring under licence from the National Monuments Service of all ground works including trial holes test pits and topsoil stripping.

3.2.2.2 Housing Estates Unit report notes a number of concerns with regard to the layout in terms of its linearity, failure to create a sense of place and identity. Car dominant layout and use of cul de sacs undesirable, Details lacking regarding cycle parking, lighting, traffic safety and boundary treatments. Absence of access to rear gardens of terraced units. Conditions recommended in the event of permission.

3.2.2.3 Transportation and Marine Department – Further information required including detailed drawing of junction upgrade. Boundary treatment details with National Road N70 and Local primary road L-2011.

3.2.2.4 Biodiversity Officer's report. Noting location upstream of the Tralee Bay and Magharees Peninsula West to Cloghane cSAC and the Tralee Bay Complex SPA and downstream of Ballyseedy Wood cSAC an appropriate assessment screening report is required to assess the potential for the development to significantly affect European Sites. Consideration to be given to native species of Irish Provenance and in consultation with recommendations of All Ireland Pollinator Plan Pollinator Friendly Planting Code Guidelines. Seed mix for grassed areas to be pollinator friendly. Mature hedgerows to be retained where possible. Following the submission of the AA Screening Report the Biodiversity Officer concludes that on the basis that there is no spatial overlap between the site and European site, no direct or indirect loss fragmentation of annexed habitats, no direct or indirect impact on water quality that could significantly affect European sites. No significant disturbance or displacement of annexed species / birds of SCI. The development is on serviced land of low ecological value and away from sensitive ecological receptors. Works are not complex in nature and the development site will be contained and controlled within an area already developed. Significant cumulative in combination effects through interaction between the proposal and other plans are not identified.

### **3.3. Prescribed Bodies**

- 3.3.1 Irish Water submission requests further information in relation to watermain layout and foul sewer route and detailed proposals for surface water discharge. Following further information report recommends compliance with Water Framework Directive and River Basin Management Plan objectives to ensure no negative impact on water quality and compliance with the requirements of EIA Directive, Groundwater Directive and Best practice groundwater protection schemes.
- 3.3.2 Transport Infrastructure Ireland report considers the development to be at variance with official public relation to control of development on /affecting national roads as outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012. The proposed development by itself of by the precedent which a grant of permission for it would set would adversely affect the operation and safety of the national road network.
- 3.3.3 Inland Fisheries Ireland. Confirmation required from Irish Water regarding capacity in relation to effluent treatment. Overflow connection to surface waters should not be permitted on the sewer drainage system. Site is close to Caherweesheen stream. Full details of any proposals to alter modify this stream or increase the hydraulic loading to the watercourse should be provided. In case of interference agreement should be reached on any works proposed. Site development contaminated surface water management is required to ensure no pollution of surface waters. The use of SUDS systems should ensure the discharge to the nearby watercourse in line with greenfield runoff and to avoid streambank erosion and flooding. Storm water disposal system to incorporate grit traps and hydrocarbon interceptors at source prior to discharge to the drainage system.

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

- 3.4.1 Submission from Liston & Co Solicitors on behalf of residents of Crystal Fountain objects on grounds of negative impact on residential amenity, flooding, sewage system is not capable of dealing with the existing properties. It is asserted that traffic congestion and hazard will be exacerbated. Proposal represents an excessive density and will impact negatively on privacy. 1.8m high wall is insufficient. No green area

provided. Overshadowing, overlooking and loss of privacy. Second submission following notification regarding material contravention procedure asserts that in light of the area being subject to flooding and issues with regard to sewage capacity it is extraordinary to consider that permission is being contemplated. County Development Plan in place for the period 2015-2021 and the residents are entitled to rely on the development plan. The proposal is contrary to principles of natural justice.

#### 4.0 **Planning History**

**08/1797** Permission granted 30/6/2009 to South Capital Developments PLC to construct (a) 39 no dwelling units (Sites 1-12, 15-24 and 32-48)(b) Construct 2 no live Work Units(Sites 13&14), (c) Construct a bin storage area (d) construct an access road, surface car parking , footpaths and pedestrian crossings (e) construct an active green area and (f) all associated site works and outline permission to construct 17 no dwelling units (sites 15-31)

**08/91797** Extension of duration of 5 years in relation to 08/1797. Expired 03/08/2019.

**09/9428** Permission to Murcor Developments Ltd to construct a neighbourhood centre consisting of two buildings (I) Building A consisting of 1219 sq.m of retail commercial space, entrance lobby at ground floor 1107 sq.m of office space and plant room at first floor level and 858sq.m of office space at second floor level. (II) Building B consisting of 275.5sq.m of retail / commercial space plant room and a medical centre at ground floor level. 293sq.m of office space at first floor level and 128sqm of office space at second floor level, (III) Construct service area consisting of dedicated delivery area, recycling centre and bin storage (IV) Construct all associated site works consisting of entrance, surface car parking, roads footpaths pedestrian crossings. Civic Square.

**09/9428** Permission granted 13<sup>th</sup> November 2013 Extension of duration of 5 years granted in respect of 09/428. Expired 13/08/2019.

**12/496** Construct a single storey with attic conversion and all associated works at Site 1.

**12/512** Construct a single storey dwelling with attic conversion and all associated site works Site 17.

## 5.0 Policy Context

### 5.1. Development Plan

The Kerry County Development Plan 2015-2021 and The Tralee Municipal District Plan 2018-2024 refer.

The site is defined as a rural area outside the settlement boundary and in policy terms is a rural area under strong urban influence.

**RS-7** Ensure that favourable consideration is given to individual one – off house developments for immediate family members (sons, daughters or favoured niece/nephew) on family farms and land holdings; subject to compliance with normal planning criteria and environmental protection considerations.

**RS-9** Facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages.

As outlined above Kerry County Council decided at its meeting of 2 November 2020 to materially contravene the development plan to grant permission for the development.

**Core Strategy CS5** Have regard to sequential development and the prioritisation of sustainable infill and brownfield development in the assessment of development proposals in urban areas.

**Settlement Strategy Urban Housing US-01** – Ensure that future housing in urban areas in the County is located on lands zoned for residential use. In towns and villages residential development shall be located in town / village centres or immediately adjacent to town/village centres (based on the sequential approach); on serviced lands and in accordance with the Development Guidance document of this plan.

### 5.2. Natural Heritage Designations

5.2.1 The site is not within a designated area. There are a number of Natura 2000 sites within 15km of the site including.

Ballyseedy Wood SAC Site Code 002112 1.2km

Tralee Bay and Magharees Peninsula West to Cloghane SAC Site Code 002070 2km

Slieve Mish Mountains SAC (Site Code 002185) 1.8km

Castlmaine Harbour SAC 000343 10km

Akeragh Banna and Barrow Harbour SAC (Site Code 000332) 10km

Lower River Shannon SAC (Site Code 002165) 12km

Castlemaine Harbour SPA (Site Code 004029) 10km to south

Stacks to Mullaghareirk Mounts West Limerick Hills and Mount Eagle SPA (Site Code 004161) 7km

Tralee Bay Complex SPA 004188 2km

### 5.3. EIA Screening

5.3.1 Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Liston & Co Solicitors on behalf of Crystal Fountain Residents. Grounds of appeal are summarised as follows:

- Site is outside the development boundary of Tralee. Proposal is at variance with the objectives of the Development Plan in relation to rural housing. Objectives RS1-RS6 have not been adhered to.
- No consultative process in terms of material contravention.
- Area is subject to flooding. Photographs appended demonstrate water on roadway and in the field.
- Sewage system is not capable of dealing with existing properties. Photos appended show sewage bubbling through on the roadway.
- Proposal would be at variance with official policy in relation to control of development on or affecting national roads.
- Proposal would exacerbate traffic congestion and road safety issues.
- Negative impact on established residential amenity.



- Proposed 1.8m high block wall insufficient.
- Proposed location of three terraced dwellings will interfere with privacy of house owners 15, 16, 17 and 18 Crystal Fountain.
- No green area provided.
- Negative Visual impact

## 6.2. Applicant Response

6.2.1 The response by Rory McGillicuddy and Associates Design Engineering Project Management on behalf of the applicant is summarised as follows:

- Appeal is similar to a submission made to the Council.
- Zoning was rectified by the Councillors who voted unanimously to zone the site for residential development<sup>1</sup>.
- Application seeks to complete this unfinished estate with residential buildings.
- A flood risk Assessment report by Malachy Walsh and Partners and a Hydrogeological risk assessment was undertaken by Southern Scientific and IE Consulting Engineers and submitted as part of the 08/1797 application.
- Appeal submission shows a picture of a random flooded field - not the site.
- No issues arise with the capacity of the local sewerage network. The system was designed to accommodate a large commercial development and the proposal will present a significantly reduced load.
- Proposal uses 2 existing entrances from the public road network and will have significantly less traffic than previous proposal.
- L2011 has become a cul de sac with low amount of traffic. The lowered speed limit has moved out to beyond the Dromcairn entrance.
- Site has been unfinished estate for the past 10 years. Kerry County Council and all local councillors are in favour of completing the development. The proposal

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<sup>1</sup> Councillors voted to materially contravene the development plan to grant permission at its meeting of 2 November 2020 in accordance with the provisions of Section 34(6) of the Planning and Development Act 2000.

for a fully residential low-density estate with an excellent layout and ample open space to serve existing and proposed houses will greatly enhance the amenity of the wider area.

- Proposed terraced units are far less intrusive than previous three storey live / work units.
- Proposal will complete this unfinished estate and are a much better use of land than the previously granted commercial development.

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

The Planning Authority did not respond to the grounds of appeal.

### 6.4. **Observations**

None

## 7.0 **Assessment**

7.1. I consider that the main issues arising in this appeal can be addressed under the following broad headings:

- Zoning and Planning History
- Density Layout and Design
- Roads and Traffic
- Flooding
- Appropriate Assessment

## **7.2 Zoning & Planning History**

- 7.2.1 On the issue of the principle of development in the context of the development plan I note the submission of the third-party appellants which question the decision of Kerry County Council to materially contravene the County Development Plan and contend that the third-party appellants should be entitled to rely on the development plan policy framework particularly in view of the timeframe of the Kerry County Development Plan 2015-2021 and Tralee Municipal District Plan 2018-2024. I note that as the site is not zoned the development is not subject to Part V of the Planning and Development Act 2000 as amended in terms of the provision of social and affordable housing. Questions also arise with regard to the precedent which a grant of permission might set and the implications in terms of sequential plan led development the core strategy and the County settlement strategy.
- 7.2.2 I acknowledge that part of the site is an unfinished housing estate and clearly the completion of this element of the development for existing and proposed residents would be viewed positively. In my view the application nor indeed the planning reports from Kerry County Council do set out a clear justification for the extent of development proposed on this overall site. I would be concerned regarding the precedent which a grant of permission on this site would set for similar such development which would be contrary to plan led development and phasing arrangements. The proposed development would clearly be contrary to the proper planning and sustainable development of the area.
- 7.2.3 I note that as the Council voted to contravene the plan to provide for the proposed development. As the Planning Authority granted the permission in accordance with the provisions of Section 34(6) of the Planning and development Act 2000, the requirements of the provisions of 37(2)(b) would not apply in this case.

## **7.3 Density Layout and Design**

- 7.3.1 In view of my conclusions above with regard to the lack of justification for the principal of development I consider that it is appropriate to confine my discussion to some key general considerations with regard to density, layout and design quality. On the issue

of layout, I note that as the proposal in part relates to the completion of a partially built housing development the layout is dictated to a degree by the existing roads and service infrastructure in place and the character of established development in the vicinity. However, I note that particularly that the north-western part of the site formerly permitted as a neighbourhood centre is not so constrained. I note that the proposal for 36 dwellings on a site area of 3.0841ha represents an extremely low density (11 per hectare). The National Planning Framework Project Ireland 2040 refers to the priority of achieving effective density and consolidation as opposed to urban sprawl. National Policy Objective 18a seeks to: *Support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.* It also provides that: *It is necessary to tailor the scale, design, and layout of housing in rural towns to ensure that a suburban or high-density urban approach is not applied to a rural setting and that development responds to the character, scale and density of the town.* However, it notes the issue of historically low-density housing development in rural towns and in general seeks to increase well designed residential density to increase efficiency and sustainability.

7.3.2 I consider that a more innovative and integrated layout would in the future make more effective use of the site, make a positive contribution to its surroundings, create a sense of identity and place, provide for effective connectivity, include a design approach to public areas such as streets and open spaces and encourage a safe sense of place as set out within the Sustainable Residential Development in Urban Areas' (May 2009). I note the lack of variety in terms of housing types within the general area. As regards the performance of the proposal in terms of the 12 criteria for sustainable urban development as set out in the Urban Design Manual, I am not satisfied that the proposed layout performs positively.

## **7.4 Roads and Traffic**

7.4.1 On the issue of traffic, I note that the submissions of Transport Infrastructure Ireland assert that the proposed development is at variance with national policy in respect of development on / affecting national roads as set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012. This submission relates to the access onto the N70 which I note is within the 60kmph speed limit area and is an established entrance and which was originally permitted and designed to cater for the mixed residential and commercial development. In my view as the proposal residential development would involve significantly reduced traffic generation and will not give rise to traffic hazard. As regards the access from the Local road L-2011 to the north I note that this is a lightly trafficked cul de sac. Sightlines are adequate and the level of traffic arising is not likely to give rise to congestion or traffic hazard.

## **7.5 Flooding**

7.5.1 On the issue of flooding I note that the flood maps shows the site as being at risk of both fluvial and pluvial flooding. The previous applications on the site 08/1797 and 09/9428 included a hydrological and flood risk assessment report by Southern Scientific Services Ltd dated (June 2009) a Hydrological Risk Assessment by ie consulting May 2009 and Hydrology report by Malachy Walsh and Partners June 2009. The current application does not include any information or assessment with regard to flood risk. I note that the report of the Senior Executive Engineer outlines that as the proposal provides for connection to the existing attenuation tanks located in the northwestern corner of the site which discharge to the nearby watercourse and which were designed to cater for significantly greater impermeable area. The report relies on previously submitted reports to conclude that the development will not be liable to flooding and would not cause flooding of adjoining lands.

7.5.2 I note that the website <https://www.flosodinfo.ie/> indicates that the locality of the site is under review for the purpose of flood risk assessment. Under the Planning System and Flood Risk Guidelines for Planning Authorities (November 2009), the site would be categorised as being in Flood Zone A where “Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided

and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied". The Planning Authority must be satisfied that the development satisfies all of the criteria of the Justification Test. In view of the passage of time it is my view that an up to date site and development specific flood risk assessment would be necessary. I conclude that the application has failed to assess the flood risk and therefore refusal on this basis is merited.

## **7.6 Appropriate Assessment**

7.6.1 On the matter of Appropriate Assessment I note that an AA Screening report by Malachy Walsh and Partners was submitted in response to the request for additional information. I also note the screening report of the Kerry County Council biodiversity Officer.

7.6.2 The AA screening report provides a detailed description of the project and an assessment of the potential for likely significant on the Natura 2000 Sites within the project's zone of influence, namely :

- Ballyseedy Wood SAC Site Code 002112 1.2km
- Tralee Bay and Magharees Peninsula West to Cloghane SAC Site Code 002070 2km
- Slieve Mish Mountains SAC (Site Code 002185) 1.8km
- Castlmaine Harbour SAC 000343 10km
- Akeragh Banna and Barrow Harbour SAC (Site Code 000332) 10km
- Lower River Shannon SAC (Site Code 002165) 12km
- Castlmaine Harbour SPA (Site Code 004029) 10km to south
- Stacks to Mullaghareirk Mounts West Limerick Hills and Mount Eagle SPA (Site Code 004161) 7km
- Tralee Bay Complex SPA 004188 2km
- Castlmaine Harbour SPA 10km

7.6.3 In assessing potential for likelihood of potential impacts the majority of these sites are screened out on the basis of lack of hydrological connection and having regard to the source pathway receptor model. In relation to the Tralee Bay and Magharees

Peninsula West to Cloghane cSAC the appeal site is upstream of the cSAC and within its catchment. Indirect hydrological connection also exists between the appeal site and the Tralee Bay Complex SPA. However, on the basis of the distance 2km upstream of annexed habitats and having regard to the fully serviced nature of the site no potential for significant effects are identified. It is reasonable to conclude that on the basis of the information provided on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Tralee Bay and Magharees Peninsula West to Cloghane cSAC and Tralee Bay Complex SPA or any other European Sites, in view of the site's conservation objectives and a stage 2 appropriate assessment and submission of an NIS is not therefore required.

## **8.0 Recommendation**

I recommend that permission is refused for the following reasons and considerations below.

### **Reasons and Considerations**

The appeal site is located outside the settlement boundary of Tralee within a rural area categorised as an area under Strong Urban influence and to which rural settlement policy provisions apply. Objective RS-9 is to facilitate the housing requirements of the rural community as identified while directing urban generated housing into the towns and villages. It is an objective of the Kerry County Development Plan CS-5 to have regard to sequential development and the prioritisation of sustainable infill and brownfield development in the assessment of development proposals in the urban area. Objective US-1 is to ensure that future housing in urban areas in the County is located on lands zoned for residential use. In towns and villages residential development shall be located in town/village centres or immediately adjacent to town/village centres (based on the sequential approach); on serviced lands; and in accordance with the Development Guidance document of this Plan. These objectives are considered reasonable. It is considered that the proposed development on unzoned lands would be contrary to the said objectives, and contrary

to the Core Strategy, would materially contravene the objectives of the development plan and would set an undesirable precedent for similar such development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Having regard to the identified high probability of fluvial and pluvial flooding attendant upon the site, which places it in Flood Zone A under the Planning System and Flood Risk Management Guidelines (2009), it is considered that the proposed development is in an area at risk of flooding. Having regard to the information submitted with the application and appeal, it is considered that the applicant has failed to demonstrate by means of a flood risk assessment, that the proposed development would not lead to flood risk attendant at the site and in the surrounding area. In the absence of a site-specific flood risk assessment, the Board is not satisfied that the proposed development would not have an adverse impact on the site and on lands outside the site by means of increased flood risk. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Brid Maxwell  
Planning Inspector

8<sup>th</sup> March 2021