



An
Bord
Pleanála

Inspector's Report ABP 310067-21.

Development	Demolition of two houses and construction of seventy-four houses, residents' gym, vehicular entrances, site works and services.
Location	Rosario, Kingston, Galway.
Planning Authority	Galway City Council.
P. A. Reg. Ref.	19/295
Applicant	Diagnostic Medical Imaging Ltd.
Type of Application	Permission
Decision	Refuse Permission
Type of Appeal	First Party X Refusal.
Appellant	Diagnostic Medical Imaging Ltd.
Observers (7 parties.)	Galway Cycling Campaign. Ross Rooney, Karena Meehan, Gerard O'Sullivan, Anne-Marie Smyth, John Glynn, Sinead O'Brien. Garrai de Brun Residents, Fort Lorenzo Residents' Association

Laura O' Donnell.

Tony and Sally O'Leary

Angela McCluskey

Gerard O'Sullivan and Karena
Meehan

Date of Site Inspection

12th August, 2021.

Inspector

Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 1.81 hectares and is formed from lands on the north side of Kingston Road (R337) to the west of Taylor's Hill, (along which a maximum speed of 50 kph applies) and the junction with the R 338 (Bishop O'Donnell Road and Threadneedle Road.) Residential developments (Manor Avenue, Garrai de Brun, Bru na Mara, Bar Na Carraige, Fort Lorenzo, Carraig Ard and Cuan Na Coille) are located on the lands to the east, north and to the west and detached houses large individual road frontage plots are located along Kingston Road which is at the southern end of the site.
- 1.2. There is a derelict bungalow and a small shed on the lands within the narrow strip within the site, which is accessed off Kingston Road whereas the rest, roughly square shaped lands within the site are stated to be in agricultural use in rough vegetation with several broadleaf trees over stony soil and the level falls from north to south.
- 1.3. The northern boundary of the site adjoins the Garrai de Brun residential estate of two storey houses which have vehicular access to the north onto the Western Distributor Road a short distance from the junction with Bishop O'Donnell Road to the east. There is a hammerhead and high limestone boundary wall at the boundary with the application site at the southern end of this access road which is a cul de sac at the end of which, on the west side, there are eight semi-detached houses. There is a high limestone wall also along the entire length of the east side of this access road and around the perimeter of the hammerhead at the southern end.

2.0 Proposed Development

- 2.1. The original application lodged with the planning authority was supplemented by additional information and clarification of information submissions. The proposals are for demolition of the existing dwelling on the site and for construction of a seventy-four-unit residential development including a gym and accesses, internal roads, parking, bin stores landscaping open space and ancillary site development works and, access via the existing entrance to the bungalow off Kingston Road.

2.2. The residential units comprise:

18 semi-detached, 8 detached and four terraced houses and, (twenty-two four bed and eight three bed units).

44 apartments in three four / five storey blocks. (20 one bed units, 18 two bed units and 6 three bed units).

Fifty-seven carparking spaces at surface level and a residents' gym are also included in the application.

The total stated area of the structures to be demolished is 302 square metres and that of the new build is 7,956 square metres. The stated plot ratio is 44.1 and a density of 41 units per hectare.

The three apartment blocks are shown along the front narrow section of the site to the west and to the east side of the internal access road off which grouped surface parking is shown for each block with Block A overlooking Kingston Road reaching a height of sixteen metres.

The proposed access is off the Kingston Road, designed as a 'Left in/Left out' only junction with bollards along the centre line of the R337 preventing no right turning. Sightlines of 45 metres in each direction from a 2.4 m setback are to be provided at the proposed entrance. The internal access road is 5.5 metre in width with 1.8 m wide footpaths to each side.

SUDS design is included for the proposed drainage arrangements incorporating an attenuation and storage system within the site including petrol interception and control of flow to the public sewer in the area. Foul drainage is to be disposed to the existing sewer 150 mm diam. network in Kingston Road. Pre-connection enquiries are to be made with Irish Water for Water supply and drainage connections.

2.3. A multiple thirteen item Additional Information request was issued on 24th June, 2020 in respect of legal interest and consent, density, design details relating to the apartment element including a request for omission of one block, open space layout, separation distances, trip generation visibility splays at the entrance, and a request for a raised table instead of bollards, roads and cycle routing, layout, lighting traffic

impact, car and cycle parking arrangements and layout within the scheme and permeability.

- 2.4. A multiple item Clarification of Additional information request was issued on 14th December, 2020 regarding legal interest and consent, trip generation, the access arrangements to which a response was lodged on 18th February, 2021

In the submissions in response to the additional information and clarification of information request the number of units is increased to eighty-four, comprising nineteen four bed detached and semi-detached houses and, sixty-five one, two and three bed apartments in four blocks, a creche (instead of a residents' gym) and modifications to the layout.

The red line boundary for the site is revised providing for additional alternative access arrangements via the access road, (for which proposals for upgrade works are included) within Garrai de Brun to the north of the application site development which as access off the Distributor Road.

The application and/or supplementary submissions include an accompanying design statement, landscape report, traffic and transport reports, engineering report, Surface Water management reports.

- 2.5. Correspondence dated 7th July, 2021 from planning authority enclosing a letter from Joh O'Connor Solicitors dated 2nd July, 2021 was received by the Board in which it is confirmed that the firm has been instructed by Daniel Connolly to extract a Grant of Representation in relation to the state of the late Peter Lydon deceased. In the letter it is confirmed that until a grant of Representation has issued, no person has legal authority to act in respect of the late Peter Lydon instructions.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated, 31st March, 2021, the planning authority decided to refuse permission based on the two reasons quoted in full below:

(1) "The proposed housing development relies upon the dispersal of traffic through alternate routes, (sic) the Garrai de Brun route has not been

demonstrated to be compliant with relevant guidelines (DMURS) or under the control/consent of the applicant. If permitted, the development would therefore result in a route which would not meet the requirements of the relevant guidelines. While access arrangements for the Kingston Road route would not stand in the event of the exclusion of the connection through Garrai de Brun, therefore (sic) in addition to the above if permitted, would interfere and endanger the safety of safety of traffic and the public constituting a traffic hazard. “

(2) “The applicant has failed to adequately demonstrate and provide consent and sufficient legal interest for the inclusion of lands forming part of this planning application. In addition, the applicant has failed to demonstrate and provide consent and sufficient legal interest for the carrying out of works to adjacent structures and lands are not under control of the applicant which are essential to facilitate this development.”

3.2. Planning Authority Reports

- 3.2.1. The reports of the Transportation, Planning and Physical Development Department indicates several concerns relating to legal interest, compliance with DMURS standards, and impacts on traffic on the local road network. Additional information requests are recommended. In the final report on the clarification of additional information submission a recommendation for refusal of permission for reasons relating to Legal Interest, Consent and legal interest and unsatisfactory proposals having regard to the standards set out in DMURS and with regard to the routing for access through the Garrai de Brun development, traffic impact and entrance arrangements.
- 3.2.2. The reports of the Recreation and Amenity Department indicate several concerns as to the sufficiency of details provided and in respect of removal of existing trees and vegetation, ecological considerations, the proposed landscaping. The final reports indicate serious concerns as to outstanding matters requiring clarification and resolution.
- 3.2.3. The reports of the Drainage Division and from Irish Water indicated no objection subject to standard requirements.

3.2.4. The planning officer indicated recommendations for multiple item additional information and subsequent clarification of information requests. He concluded in his final report, further to review of the responses of the additional information request and the clarification of additional information request, the recommendations in the technical reports and the third-party observations that the proposals with regard to access and circulation are unsatisfactory and that there are unresolved issues regarding Legal Interest and Consent. He recommended refusal of permission based on the reasons set out under section 3.1.1 above.

3.3. **Third Party Observations**

3.3.1. Multiple submissions were lodged from residents' associations, groups and individuals, including supplementary submissions of the further information submissions in which concerns and objection are raised over several issues as outlined in brief below:

Validity of the application, legal interest and consent

Opposition to pedestrian linkage through the Garrai de Brun residential development.

Lack of clarity on the proposed arrangements for cycling within the scheme and along Kingston Road and cycle parking,

Objections concerning Layout of the scheme, permeability, density of development, dwelling design, scale and heights,

Overlooking

Deficiencies in Traffic impact assessment, trip generation, additional volumes at the junction on the R338 and R337 and turning movements at the entrance, traffic hazard and endangerment of public safety.

4.0 **Planning History**

There is no record of planning history for the application site.

5.0 Policy Context

5.1. Development Plan.

- 5.1.1. The operative development plan is the **Galway City Development Plan 2017 – 2023** (CDP) according to which the site is within an area subject to the zoning objective: “R”: *“To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”*.
- 5.1.2. The location is within the “Outer Suburbs”.
- 5.1.3. Development management standards are in Chapter 11. For residential development in Outer suburbs there is a requirement for one parking space per dwelling and one visitor space per three dwellings or, one space per dwelling if the layout is grouped. (Section 11.3.2.(g) refers.) Maximum plot ratio is 0.46.1
- 5.1.4. Fifteen percent of the total site area is required for allocation for communal recreational and amenity space provision.
- 5.1.5. Guidance on urban design is in section 8.78 providing for high quality development and protection of existing distinctive characteristics of the city.

5.2. Strategic Guidance.

“**Sustainable Residential Development in Urban Areas** (2009”) and the accompanying, “**Urban Design Manual**, 2009”.

Sustainable Urban Housing Design Standards for New Apartments, 2020, (Apartment Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended. (Updated from 2018.)

Urban Development and Building Heights: Guidelines for Planning Authorities”, (The Building Height Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended.

Sustainable Urban Housing Design Standards for New Apartments, 2020, (Apartment Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended. (Updated from 2018.)

Design Manual for Urban Roads and Streets. (DMURS) Dept Transport Tourism and Sport and Department of the Environment Community and Local Government.

5.2.1. The Apartment Guidelines provide for the following:

To enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas.

Make better provision for building refurbishment and small-scale urban infill schemes.

Address the emerging build to rent and shared accommodation sectors.

Remove requirements for car parking in certain circumstances where there are better mobility solutions to reduce costs.

According to the Guidelines: the most suitable locations are central and/or accessible urban locations such locations are generally suitable for small to large scale higher density development that may wholly comprise of apartments such as within walking distance of the principle city centres or significant employment locations that may include hospitals and third level institutions, sites within reasonable walking distance (i.e. up to 10 minutes or 800 metres to 1,000 metres) to/or from high capacity urban public transport stops such as Dart or Luas and sites within, easy walking distance (i.e. up to five minutes to and from high frequency urban bus services).

5.2.2. “Urban Development and Building Heights: Guidelines for Planning Authorities”, (The Building Height Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended.

According to Special Planning Policy Requirement (SPPR1) it is government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores.

Planning Authorities area required to explicitly identify, through the statutory plans, areas where increased building heights will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the

National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

According to SPPR 2 in driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was received from MKO on behalf of the applicant on 27th April, 2021 attached to which are:

A letter of consent from the Corporate Services Section at Galway City Council to the lodgement of the application. (It includes a statement limiting the validity of the letter to six months.)

A statement by the applicant's solicitor that the applicant is legal and beneficial owner of "most of the lands "subject of the application and beneficial owner of the remainder of the lands

Counsel Opinion of Title. (Eamon Molloy SC) dated, 23rd April, 2021. In the 'Summary Conclusion' it is stated, *"There is nothing in the title objections to interest in land, however they have since been speciously protested. Title Objection was expressly withdrawn, 4 December, 2019 by the sole person, Peter Lydon who could have made it. A lesser boundary wall query is anticipated and answered by statute."*

A statement by the applicant's consulting engineers on the Existing Road Network and DMURS compliance.

A statement of support by the applicant's architect along with a copy of the site location map and site layout plan.

- 6.1.2. According to the appeal submission:

- The red line boundary was modified in the further information submission,

providing for the entrance to the north via the Garrai de Brun residential development instead of from Kingston Road. In the appeal submission the red line boundary has been further extended to include the central spine road in the Garrai de Brun development including the area for the minor upgrade works required to ensure compliance with DMURS standards. It is requested that the proposed development be considered on this revised basis.

- In response to Reason 1 for the decision to refuse permission reference is made to the attached statement by the applicant's consulting engineers and it is stated that Garrai de Brun is the existing road and is taken in charge by the City Council which has given its consent to its use. Subject to minor upgrades the route will be compliant with DMURS standards. There will, as a result be two vehicular entrances, one off Kingston and the other over the Garrai de Brun route.
- As the Garrai du Brun route is not excluded, the access to the Kingston Road would not interfere with and endanger public safety by reason of traffic hazard.

6.1.3. According to the accompanying statement and drawings prepared by the applicant's consulting engineers: -

- The Garrai de Brun road is circa 160 metres in length and 6.00 metres plus in width, (5.80 m in width at its narrowest.) Access is via a Stop priority junction onto the Gort Na Bro Road where there is a Stop priority junction and along which there are two internal T—junctions serving internal residential areas in Garrai de Brun. In turn it links to the Western Distributor Road and Bishop O'Donnell Road. The road is classified as a "Link Street" in DMURS and complies with the Link Road standards; Flat top ramps promoting lower design speeds are to be installed a traffic calming measures and a 30 kph speed sign in the development site.
- For cyclists and pedestrians, the footpath which links exceeds or complies with DMURS requirements and will be enhanced by installation of tactile paving, dropped kerbs at the junction onto the estate and main entrance in the area covered by the (City Council's) letter of consent. Cyclist Access to Garrai De Brun has grade cycle lanes onto Gort Na Bro Road which links to

the cycle lanes towards the city via the Western Distributor Road as far as Ballymoneen roundabout, Cyclists will share the estate road where there will be a maximum 30 kph speed limit.

- The Kingston Access is to be left in only and designed DMURS standards and to restrict illegal entry and exit attempts.
- In response to Reason 2 for the decision to refuse permission it is stated that Issues surrounding legal ownership are not planning matters but sufficient information was provided to enable the application to be validated. The further information submission provided confirmation that the majority of the site is in the applicant's ownership. The Garrai du Brun route is in the City Council's charge and it has given written consent to the inclusion of the route in the redline boundary. Reference is made to the attachments to the appeal for confirmation in this regard. The boundary wall was not "taken in charge" but the Opinion of Senior Counsel included with the submission addresses the status of the wall according to which there is a mechanism for resolution where there are disputes whereby an applicant can apply to the District Court for a "works order", which may be subject to various protections for the neighbour.

6.2. Planning Authority Response

There is no submission from the planning authority on file.

6.3. Observations

- 6.3.1. Observer submissions were lodged by the following eight parties each of which is outlined below: -

Galway Cycling Campaign.

Ross Rooney, Karena Meehan, Gerard O'Sullivan, Anne-Marie Smyth, John Glynn, Sinead O'Brien.

Garrai de Brun Residents,

Fort Lorenzo Residents' Association

Laura O' Donnell.

Tony and Sally O'Leary

Angela McCluskey

6.3.2. Galway Cycling Campaign.

A detailed submission has been lodged in response specifically with regard to the documentation provided by the applicant's consulting engineers. It is stated that DMURS, the CDP, Galway Transport Strategy (GTS) and "Permeability Best Practice Guide" (NTA 2015) were consulted. According to the submission: -

- The proposed entrance off Kingston Road is hazardous and unnecessary and should be confined to pedestrians and cyclists. There is objection to any change, having regard to the definitions in DMURS, to possible creation of a "Link Street" (providing links to arterial streets or between centres, neighbourhoods and or suburbs), as opposed to a Local Street which provides access to a Link Street and onwards to an Arterial route. The vehicular access off Kingston should be removed to prevent through traffic. This would provide consistency with Policy 3.2 and 3.6 of the CDP, sections 3.3 and 3.4 of DMURFS and the GTS. /Policy Objective 27 of the National Planning Framework.
- The southern boundary (to Kingston Road) should setback and a two metres with footpath with potential cycling route space is required. It is narrow and hazardous at present but designated as a secondary cycle route in the GTS.
- Permeability and routing through adjoining developments should be improved facilitating pedestrians and cyclists. An additional connection to and from Carraig Art or Cuan Na Coille is at a high standard is recommended and it would provide direct safe connection to Bishop O'Donnell Road. A location adjacent to the playground and House No 84 is recommended.
- Cycle parking provision is inadequate in distribution, layout and design. The space between cycle parking standards is too narrow, 1.2 metres being required with some space being provided for non-standard cycles such as

cargo bikes. Refer is made to the Dublin City Bike Paring Guidance and National Cycling Manual (NTO)

- Additional traffic calming measures and measures to discourage through traffic's impacts on the Garrai De Brun estate are necessary.
- There is concern as to speed of entry and exit at the junction of the Garrai de Brun entrance where the corner radii should be reduced to 4.5 m in line with section 4.3.3 of DMURS and traffic calming measures are required for the internal routes. Flat top speed ramps should be redesigned as raised crossings at pedestrian desire lines and the entrance should have dished paving having regard to section 4.4.7 of DMURS.
- Construction traffic should be managed and routed to minimise impact on the residential areas and schools in the vicinity. Construction traffic routing through Garrai de Brun is not supported and a temporary well controlled left in left out entrance of Kingston Road is recommended.

6.3.3. Karena Meehan and Gerard O'Sullivan.

Ms Meehan and Mr. O'Sullivan reside at 5 Kingston Road and according to the submission lodged on their behalf: -

- The decision to refuse permission is supported but it and the application are flawed. The proposed development was changed to a predominant apartment scheme on a larger site with changes to the access proposals made at application stage. The modification and the requests issued are not accordance with the provisions of the Planning and Development Planning and Development Regulations. 2001, as amended. Site notices were not erected for the proposed access via the Garrai de Brun estate and the letter providing consent to the applicant to include in the appeal is unacceptable.
- The assessment is flawed in the requests for increased density in revised proposals in a further information request. A more appropriate framework, given the accessibility constraints is in recent guidance in a DHLGH Circular Letter (02/2021 (Residential Densities in Towns and Villages) advising a baseline figure of 20 units per hectare.

- The lack of a viable entrance is the problematic given high car dependency in the city, anticipated high car dependency in the proposed development and negligible use of public transport and congested local road network. Reference is made to volume and capacity ratios at the Kingston Road and Bishop O'Donnell Road junction and other junctions in the Distributor route in this regard. is made the EIAR for the Galway City Ring Road in this regard.
- The site has mature trees, (which will be lost) and ecological and amenity potential and scope for a pedestrian and cycle way link through it There is a lack of regard for the sustainable development potential of the site and there is an underestimation of the constraints arising from the congested local road network.

6.3.4. Garrai de Brun Residents.

In the submission attached to which there are several appendices. According to the submission: -

- The proposed route through the Garrai De Brun estate is not DMURS compliant– taking into account the proposed traffic calming measures. For a link or arterial route, it would need a minimum width of 6.5 metres. The categorisation as an arterial route contradicts the EIAR for the Galway Ring Route and the applicant's traffic and transportation assessment.
- Inevitably the route would be used by HGVs as a short cut. An ESB Substation at 150 metres distance is also too close to the junction, 450 metres clearance being need for a Link/Arterial route. The development is not compliant with, *Recommendations for Site Development Works for Housing Areas*.
- There is insufficient legal interest with regard to the Folio GY 36069 as the Title status has not been determined. A copy of a letter issued by Keane Solicitors is provided which includes comments on the Counsel's Opinion regarding legal entitlement and on the status of the boundary wall with Garrai de Brun included in the appeal. The applicant is not entitled to demolish the boundary wall.

- The lands within the Garrai de Brun estate are not in the ownership of the local authority. It is erroneous in stating that it is in ownership. Reference is made to correspondence issued by Galway City Council and by Keane Solicitors to the Galway City Council in the latter of which it is stated that the estate road is privately owned for the use by residents of Garrai de Brun. It had been incorrectly stated that it had been taken in charge and that local authority was in ownership.

6.3.5. Fort Lorenzo Residents Association

According to the submission of the Association:

- The proposals to provide an entrance through the Garrai de Brun estate is unacceptable. It would add to hazardous conditions and delays at the turn onto the Distributor Road which is seriously congested. This route should be made into an entrance route only along with the cycling and pedestrian lanes.
- Kingston road could be made an exit with a box grid with an opportunity for left through onto Bishop O'Donnell Road or Taylors Hill. Making a U turn at Manor Drive is dangerous.
- The perimeter wall along Fort Lorenzo is breached due to subsidence and hazardous. It is essential, (as proposed in the application) to make this wall good and this should be a requirement permission is granted.

6.3.6. Laura O'Donnell, 70 Garrai De Brun.

Ms O'Donnell resides on the cul de sac leading to the hammerhead off which the proposed access from the proposed development through Garrai de Brun is to be located. According to her submission, the additional traffic, including construction stage traffic would seriously affect the amenities and enjoyment of her property and those of the other residents in Garrai de Brun and residents already have difficulty in accessing the Distributor Road. It is her view that the access for the proposed development should be onto Kingston Road only.

6.3.7. Tony and Sally O’Leary, No 29 Garrai De Brun.

Ms and Mr Rooney object to the proposed access via the Garrai De Brun residential development, including the proposed demolition of the boundary wall and it is requested that permission be refused. According to their submission:

- The applicant cannot demolish the wall in that issues as to land ownership are not resolved, that while the local authority has taken in charge Garrai De Brun the ownership and entitlements remain with homeowners. With regard to CPO issues relating to the N6 Ring Road it is contended that a section of these lands is within the Garrai de Brun estate and are not in the ownership of the applicant.
- The Garrai de Brun road is unsuitable, is narrow and does not have capacity to accept additional traffic as a Link route between the proposed development and the Distributor route materially changes the road. Right turns are particularly problematic and hazardous at the junction with the Distributor route. There would be serious congestion and hazard and safety issues and that it may not be possible to prevent HGV traffic from using it as a route including for shortcuts to the Galway Retail Park.
- There are also concerns about increases in and, safety of cyclists using the route through the Garrai de Brun estate and about the safety of pedestrians using footpaths as conditions may be treacherous. The bus stop for the 405 route is too close the junction serving Garrai de Brun. adding to delays and safety concerns and hindering the provision of high-quality public transport as provided for in the GTS Public transport study.

6.3.8. Angela Mc Cluskey, No 76 Garrai De Brin.

Ms McCluskey objects to the proposed breach through the boundary wall at Garrai de Brun and its demolition in order to provide for the access for the proposed development via Garrai de Brun. She states that the cul de sac is too narrow and that there are grid lock and safety concerns.

6.3.9. Ross Rooney, Karena Meehan, Gerard O’Sullivan, Anne-Marie Smyth, John Glynn, Sinead O’Brien.

According to the submission:

- The Counsel’s Opinion included in the appeal is subjective, inconsistent, and selective with regard to the law and argumentative. The observer party discusses the opinion and documentation referred to in it regarding beneficial interest.
- The statement about the boundary wall with the Garrai de Brun estate in the Counsel’s Opinion is questioned. The wall is not a “party wall”, and it relates to the Garrai de Brun estate only. The applicant cannot demonstrate that it has an available exit onto the Garrai de Brun estate and so the applicant does not have legal interest over the extent of the estate.
- The ownership remains unclear for Folio G 36069 (bungalow on Kingston Road.) and the argument in the Opinion in which comments are made with reference the correspondence in relation to the claims of Mr Connolly, nephew of the late Mr. Lydon. The applicant does not have sufficient legal interest or consent with regard to the Folio lands.
- Garrai de Brun estate is not in the ownership of Galway City Council and the roads are in private ownership but it is agreed that maintenance of the roads and services are in charge of the Council. A solicitor’s letter in this regard is attached to the submission.
- The planning authority view that the development is not compliant with DMURS standards, (irrespective of the traffic calming measures proposed) is supported and the routing through Garrai De Brun poses safety risk to its residents and those of the proposed development. The Garrai de Brun estate road (“Link Road”) is outside the scope of the Road Safety audit where there are traffic concerns regarding the intersection with the hammerhead, the wall to be demolished and conflicting traffic movements with vehicles exiting and entering the adjoining property at No 73 Garrai de Brun. Heavy traffic will use the route and the ESB substation should not be within 150 metres of HGV traffic passing along the estate road.

- There is lack of safe connectivity and no dedicated cycle lane on Kingston Road to support the residential development. Cyclists are likely to travel towards the Kingston Road and Salthill where the road is dangerous.
- The development is unsuited to and is contrary to the prevailing character of large houses on large tree lined plots in the R337 area. With regard to the “Outer Suburbs” location, demolition of houses for higher density apartments (77% in the proposed scheme) with a predominance of one bed units) materially contravenes the CDP Redevelopment Policy. It fails to meet exceptions to the policy for higher density because the land was not rezoned, the prevailing pattern on Kingston Road is low density/large plots and residential amenity would be adversely affected. Reference is made to a refusal of permission for demolition of a house and replacement with four apartments under P.A Reg. Ref. 19/49.
- Infill development should not alter the prevailing character according to section 2.5 of the CDP The proposal is a high-density scheme dominated by high rise apartments on large footprints. The proposed apartment blocks in a staggered serpentine layout at heights to seventeen metres on elevated land especially Block 1 have no regard to prevailing pattern and it adversely affects the property of Karena Meehan and Gerard O’Sullivan in overbearing impact and proximity.
- A four-storey apartment block was refused permission in the ‘Outer Suburbs’ by reason of design height scale and mass and overdevelopment and failure to integrate into the surrounding area. (ABP 308610 refers)
- There is insufficient regard for the sylvan character of the area and the site is not strictly a greenfield site. Reference is made to a decision, following appeal in 2006 for a three-storey development on Taylor’s Hill Road for overdevelopment and impact on trees and sylvan character. (ABP 213865 refers.)
- Open space communal space provision is inadequate in layout and quality. the central space being steeply sloped and likely to be limited in usability.

- The creche is in the wrong location on the site affecting residential amenities of adjoining properties. A buffer should be considered as 0.715 metres separation distance is inadequate.
- There is a lack of ecological assessment (a bat survey may be required) and an archaeological assessment due to the location in the grounds of the former Bath Lodge.

7.0 **Assessment**

7.1. The issues central to consideration of the proposed development are discussed below under the following subheadings: -

Legal Interest.

The Proposed Development in principle,

Density, design, scale, mass and height,

Site Layout, Landscaping and amenity,

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. **Legal Interest.**

7.2.1. With regard to the issue as to the applicant's claims as regarding the legal beneficiary status in relation to Folio G36069, the southern section of the site on which the bungalow and the access through to Kingston Road is located, it is considered that the dispute remains unresolved and is a significant matter which should be for resolution through the legal system. In the absence of final resolution of the matters with regard to legal interest or consent, having regard to the claims as to beneficial ownership and if relevant, the extent to which any rights of way over the lands in Folio 36069 there is a likelihood development subject of a grant of permission would not be feasible or implementable due to insufficient legal interest or consent. Reliance on the provisions of section 34 (13) of the Act, with a view to post planning resolution of this regard would therefore be inadvisable.

- 7.2.2. As a result, it would be inappropriate to grant permission in that favourable consideration of proposed development in the absence of resolution of the issue of Title and confirmation as to adequacy the legal beneficiary claims, consent and legal interest in respect of the lands subject of Folio G36069. It is therefore considered that the planning authority decision to refuse permission on grounds of insufficient legal interest is reasonable.
- 7.2.3. A strong case has been made with regard to entitlement to create an opening through the limestone wall along the boundary on the southern side of the hammerhead to provide access for the proposed development. With regard to the access route through Garrai De Brun and the associated dispute over the legal entitlement to create an opening in the wall along the perimeter of the hammerhead at the end of the internal road at the southern end of the Garrai De Brun Estate to facilitate access to the Distributor Road to the north, there is no evidence that the Garrai de Brun is a private development under private management and control. As such it is not apparent that a right of way over the road cannot be established. However, it is understood that the limestone wall was constructed partially at the expense of the residents within Garrai De Brun who do not consent to interventions to it which would be necessary to provide for the route through to the Distributor Road from the proposed development.
- 7.2.4. Having reviewed the documentation available in connection with the application and the appeal, it is considered that reliance on the provisions of section 34 (13) of the Act, with a view to post planning resolution of this regard would also be inadvisable and that clarification and confirmation in this regard is required in advance, in the event of possible favourable consideration. It is therefore considered that the planning authority decision to refuse permission on grounds of insufficient legal interest is reasonable.
- 7.2.5. Correspondingly, the impact on traffic volumes, notwithstanding the submission of a transportation and traffic assessment and supplementary submissions by the applicant, the impact of the additional traffic generation cannot be assessed in the absence of any certainty as to access arrangements and routing on the local road network. The observations of the Transportation Department in its final report of 23rd March, 2021 in which refusal of permission recommended in this regard and in relation to reliance on lands outside on lands outside the applicant's control to

achieve DMURS standards for the connection through the Garrai de Brun estate is noted in this regard.

7.3. The Proposed Development In principle.

- 7.3.1. The lands have the benefit of a CDP residential zoning objective: R “To provide for residential development and for associated support development which will ensure the protection of existing residential amenity and will contribute to “sustainable residential neighbourhoods”. There is no objection in principle to residential development.
- 7.3.2. Furthermore, with regard to provisions of section 2.5 of the CDP which preclude demolition for higher density development in the ‘outer suburbs in the interest of protection amenities of ‘existing residential neighbourhoods’ it is considered that subject to it being demonstrated that a proposal for development will not reduce existing residential amenity, (a requirement for exceptions), demolition of the existing bungalow would be acceptable.
- 7.3.3. It is noted, following review of the core strategy and the Land use standards and specific objectives for “R” zoned lands within the CDP (chapters 2 and 11) that there is no information on how the subject lands may have been taken into consideration with regard to the delivery of the projected total number of new dwellings provided for the CDP’s plan period. The total number of units proposed, (84 according to the further information submission) is significant having regard to the overall projection of circa 3,200 units for the west in the core strategy.
- 7.3.4. The site location is not within any of the identified areas for which a Local Area Plan is or is intended to be prepared or within any of the identified parcels of lands within “R zones” within section 11.2.8 for which there are specific development objectives. In effect, the CDP other than providing for the zoning objective, is silent with regard to the application site lands and there are no references to any considerations for future plan periods. It may be arguable that in the course of the CDP review, the possibility of and scope for major high-density development on the lands was not

taken into consideration. Comprehensive consideration of a high-density development proposal is hindered in the absence of such information, within a statutory framework to facilitate the drawing up proposals for applications and for their assessment having regard in particular to density, layout, roads and access connectivity, amenity and other qualitative and quantitative considerations.

- 7.3.5. The CDP was reviewed and adopted prior to the bringing into effect of the national strategic policy and guidance as provided for in the National Planning Framework and it has not been Varied with regard to the application site lands. There is a distinct difference between the CDP's policy and objectives and those of the statutory guidelines, issued in 2018 and updated in 2020 with which the planning officer has based his assessment of the proposed development particularly with the requirement for higher density development in the interest of consolidation of settlements and sustainable development.
- 7.3.6. It is noted that the planning officer in interpreting the Apartment Guidelines considered that the location would fall within, "An Intermediate Urban Location" as provided for in section 2.4.(12) as, "*generally suitable for smaller scale higher density.... (at less) than 45 units per hectare.*" and has had regard to these provisions as a result of which a higher density development is required.
- 7.3.7. Given the foregoing it can be concluded, having regard to the development plan provisions for the site lands, that the proposed high- density development on the application site is not plan-led. It is arguable that the high-density development would be delivered achieved at the expense of higher-quality and integration into the established character of development on the north side of Kingston Road and attainable quality and residential amenity within the development.

7.4. Density, design, scale, mass and height.

- 7.4.1. The modifications requested and provided for in the supplementary submissions lodged in response to the requests for additional information and clarification of additional information, (providing for an increase to eighty four from seventy eight units) but achieve an improved layout for the internal road and carparking and a less

dominant visual impact from the apartment blocks at the southern end of the site (Blocks 1 and 2) in which floors have been omitted but Blocks 3 and 4 accounting for forty units in total are considered excessive in scale, mass and height and visually dominant and intrusive within the scheme itself and in relation to surrounding residential development.

- 7.4.2. It is considered that the higher density scheme, requested from the applicant by the planning authority, having regard to national policy, has been achieved at the cost of a lower density scheme of good quality with high amenity potential for the occupants and the amenities of adjoining properties and the area in and integration into compatibility with and the established pattern and character of the surrounding development along Kingston Road. Higher quality (and lower density) may be achievable through omission of Blocks 3 and 4, resulting in improved configuration and amenity potential for Public open space area 1 with linkage and permeability within the site area through interconnectivity between the three designated open space areas and through modification that provide for greater tree retention at the southern end of the site.
- 7.4.3. Such a lower density development in the region of 20-25 units per hectare may be consistent with that envisaged for “Outer Suburbs” within residential zoned parcels of lands not subject to specific objectives within the CDP. It would contribute to sustainable residential neighbourhoods as provided for under the zoning objective and the criteria provided for in section 2.5 of the CDP in which higher residential density is encouraged but with a balance between reasonable protection of residential amenities of outer suburbs and protection of the established character.
- 7.4.4. The overall dwelling mix and the internal accommodation within the units in terms of layout, sizes and private open space provision are generally consistent with minimum standards as provided for in the Apartment Guidelines.

7.5. Site Layout, Landscaping and Amenity

- 7.5.1. The surface parking, the quantum of which is appropriate, well distributed and laid out, at the southern end of the site. On the other hand, the continuous linear ‘end on’

and parallel parking along the entirety of the roadway in front of the south facades of Apartment Blocks 2 and 3 as far as the creche dominates the development and diminishes its amenity potential. It is noted and it is also pointed out in the Transportation Planning and Physical Development Section's report that this arrangement give rise to conflict with traffic on the road and that dimensions of spaces fall short of the minimum standards required in the CDP. It is not apparent that the scope for 'home zones' as an element of the proposed development, as recommended in DMURS. was taken into consideration in the design for the development.

- 7.5.2. There is a lack of clarity with regard to the site layout, having regard to roads and open/ amenity space distribution and connectivity. Taking into account the internal roads' layout routing and the legal capacity of the applicant to implement access arrangements issues as consistency with DMURs standards including the categorisation or classification of the road through Garrai de Brun which terminates at the boundary with the application site are unresolved. Without resolution of these matters with regard to the boundary wall at the northern end of the site and Folio 360069 the remaining lands would be landlocked, notwithstanding issues as to trip generation and impact on traffic volumes and risk to public safety.
- 7.5.3. Similarly, there is a lack of consideration within the proposal for permeability providing for cycling and walking along desire lands and which is to be encouraged and facilitated according to national and local policy. It is not evident that routing through adjoining developments and adequacy of facilities along the local road network can be assured. Both the Kingston Road and Taylor's Lane are narrow with footpath circa 1.2- 1.5 metres in width according to the submitted traffic study. and provision cycle paths would not appear feasible. There is no objection to the shared surface within the development.
- 7.5.4. The sylvan character is a strong feature of the Taylors Lane / Kingston Road areas which are predominantly in low density residential development with large, detached dwellings on deep individual plots. The submitted landscape report is considered insufficient in detail and assessment especially with regard to the southern end of the site on which the bungalow is located. There are several mature broadleaf trees in this area and hedgerows which are to be removed although it is noted that biodiversity is advocated in the proposed planting but lacks elaboration on how it is

to be accommodated within the development. Furthermore, a fully comprehensive ecological survey and assessment report as recommended in the report of the Parks Superintendent at the Recreation and Amenity Department is warranted given the size and possible likelihood of the presence of ecological features and or habitats of interest within or in the vicinity of the site.

- 7.5.5. The application submission indicates significant tree planting (seventy-two) is proposed to mitigate tree removal. It is considered that a more comprehensive arboriculture and tree survey and assessment report and accompanying landscaping and planting scheme to include measures for protection of trees to be retained and along with schedule of works is warranted.
- 7.5.6. It is noted that the Landscape Architect from the Recreation and Amenity Department, in the supplementary reports indicate serious concerns over the lack of tree survey details, a survey and Tree Constraints plan at BS5837 standards being a requirement which is among the recommendations.

7.6. Environmental Impact Assessment Screening.

- 7.6.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, 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.

Appropriate Assessment Screening.

- 7.6.2. Having regard to the scale and nature of the proposed development and to the location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation.

- 8.1.1. In view of the foregoing, it is recommended that the planning authority's decision to refuse permission be upheld. Draft Reasons and Considerations follow.

9.0 Reasons and Considerations.

- 9.1.1. On the basis of the submission made in connection with the application and the appeal it is considered that the applicant has failed to adequately demonstrate and provide evidence of consent to or sufficient legal interest in the lands forming part of site of the proposed development and for the proposed interventions to the wall at the northern end of the site and adjoining lands required in order to provide for access to and from the development and to enable the development to be implemented. It would therefore be inappropriate for the Board to consider a grant of permission for the proposed development in these circumstances

Jane Dennehy
Senior Planning Inspector
16th August, 2021.