



An  
Bord  
Pleanála

## Inspector's Report ABP 301250-21

<b>Development</b>	72 dwellings
<b>Location</b>	Ballygroman Lower, Killumney, Ovens, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	20/6894
<b>Applicant</b>	Denis O'Brien Developments Ltd. (Cork)
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	Concerned Residents
<b>Observers</b>	<ol style="list-style-type: none"><li>1. An Taisce</li><li>2. E &amp; T. Sweeney</li><li>3. Killumney Utd. FC</li><li>4. Peter Sweetman &amp; Associates</li><li>5. Michael Murphy</li></ol>

**Date of Site Inspection**

08/07/21

**Inspector**

Pauline Fitzpatrick

## **1.0 Site Location and Description**

- 1.1. The site forms part of larger site of 7.8 hectares to which appeal reference ABP-302638-18 refers. Permission was granted on the overall site for 71 houses, 8 no. residential serviced sites, a creche and associated works including a roundabout at the entrance to the site. The site subject of this appeal comprises the eastern section of the said larger site and has a stated area of 4.9 hectares.
- 1.2. The location of the site is as described in the said previous appeal and is as follows:
- 1.3. The site is located 5 km to the south west of Ballincollig town centre and 2.2 km to the south west of Junction 2 on the N22, known as Ballincollig West, adjacent to which lies the Dell EMC Works. The L2216 runs from the N22 and it serves the townlands of Lisheens, Grange and Killumney. Along this local road lies considerable ribbon development and several housing estates and it passes through Killumney Village, within which there are a number of retail and commercial businesses.
- 1.4. The junction between the L2216, Killumney Road (east/west route), and the L2218, Crossbarry Road (north/south route), lies within the north eastern corner of the site. The River Bride runs to the north of the Killumney Road and the embankment of a former railway line runs to the south. This embankment has been incrementally redeveloped to provide one off dwelling houses.
- 1.5. The appeal site comprises of two fields (part thereof of the northern most field) which have an undulating topography, rising towards the south and south west. The field boundaries are delineated by lined hedgerows with gaps allowing access. A line of one-off dwellings which front onto L226 back onto the site with the northern site boundary delineated by a hedgerow. A timber post and wire fence denotes the boundaries around the one-off dwelling house to the east. Access to the site is available from the north eastern corner from the Crossbarry Road.

## 2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on 18/12/20 with further plans and details submitted 24/03/21 following a further information request dated 19/02/21.
- 2.2. The proposal will modify part of the permission granted on a larger site under ref. 302638-18 (17/7165). The northern portion of the larger site on which the greater number of units are permitted is to remain unchanged. This appeal refers to the southern and eastern section. It is proposed to replace the permitted 20 no. detached and semi-detached units and 8 no. serviced sites with 72 no. dwellings in a mix of designs, a creche and ancillary works. Thus, the housing scheme in its totality would comprise of 123 dwelling units, an increase of 44 over that permitted.
- 2.3. The dwelling units subject of this appeal consist of:
- 14 no. 2 bedroom units
  - 21 no. 3 bedroom units
  - 37 no. 4 bedroom units

The application is accompanied by:

- Planning and Design Statement
- Construction Management Plan
- Architectural Design Statement
- Services/Infrastructure Report
- Lighting Report
- Heritage Impact Assessment (Former Railway Bridge)
- Stage 1 AA Screening Report
- Irish Water pre-connection enquiry response
- Letter of consent from local authority for works on public land.
- Solicitor's letter relating to legal agreement re. access to adjoining dwelling.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission for the above described development subject to 30 conditions. Of note:

Condition 1: The development shall comply with the terms and conditions of permission ref. ABP 302638-18 (17/7165).

Condition 3: Northern boundary wall to be 2.4 metres in height and finished in natural stone along the entire extent of the boundary.

Condition 5: Developer to enter into a connection agreement with Irish Water.

Condition 20: No dwelling to be occupied until water and sewage services are installed and functioning in accordance with the connection agreement made with Irish Water.

Condition 23: Applicant to construct the footpath, bridge extension and crossing point on the L2216 at its own cost, to be completed before dwellings are occupied.

Condition 30: Special contribution of €30,000 towards planned footpath and traffic calming improvements in Killumney village.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **1<sup>st</sup> Area Planner's** report dated **19/02/21** notes:

- The applicant has divided the original site measuring 7.8 ha and is proposing to develop one part under the governing permission ref. 302638-18 and the other part under this application. However it should be read as one housing estate and, as such, it is considered that the conditions attached to 302638-18 are applicable to the current proposal.
- There appears to be 2 no. ongoing legal disputes with 3<sup>rd</sup> parties. The issues were raised in the previous application and the Inspector addressed same in his report. It is not within the remit of the planning authority to resolve legal disputes.

- The housing estate exceeds the normal 50 unit recommended scale of development.
- The number of units permitted in Killumney/Ovens is 310 (not including the permission granted on site). The proposal would bring the total to 433 units which is 182 in excess of the LAP objective for 251 units.
- A similar scenario existed when the previous application was being assessed. The assessment of same at appeal stage and its acceptability implies a certain fluidity with the limits set out in objective GO-01 and, perhaps, more emphasis is placed on the quality of the layout and design rather than numbers proposed.
- The layout offers a number of different character areas, provides for a sufficient housing mix and complies with objective HOU 3-3.
- The density of the overall estate would be 15.76 units per hectare. The proposed increase in density is not of a scale to render the development inconsistent with the existing village character.
- The issue of insufficient capacity in the wastewater treatment system was raised and addressed in the previous appeal. A condition was attached precluding dwelling occupancy until water and sewage services were in place. The same approach can be taken in the current case.

A request for further information recommended.

The **2<sup>nd</sup> report** dated **20/04/21** considers the further information response to be acceptable and recommends a grant of permission subject to conditions.

The recommendations of both reports were endorsed by the Senior Planner.

### 3.2.2. Other Technical Reports

The **Area Engineer's** report dated **27/01/21** considers the proposed access arrangements which are the same as previously approved to be acceptable. Clarification required as to who is to construct the section of the footpath along the L2216 connecting the roundabout to the village. Special contribution recommended towards traffic calming and footpath improvements (calculations provided).

**Public Lighting** in a report dated **19/01/21** has no objection subject to conditions.

**Housing Officer** in a report dated **20/01/21** notes that 7 units are required under the obligations of Part V. To be dispersed throughout the development.

**Estates Primary Report** dated **19/02/21** has no objection subject to conditions.

### 3.3. **Prescribed Bodies**

**Inland Fisheries Ireland** in a letter dated **18/01/21** recommends that Irish Water be requested to confirm there is sufficient capacity in a wastewater treatment facility.

**HSE** in a letter dated **25/01/21** has no comment.

**Irish Water** in a letter dated **18/12/20** states that it has no objection. The report notes that there is insufficient capacity in both the water supply and wastewater infrastructure to accommodate this and other developments and upgrades will be required.

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

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to access and traffic, lack of public transport, density, impact on residential amenities, boundary treatments, tree protection, impact on character of area, adequacy of public notices, consent to undertake works, adequacy of wastewater infrastructure, assimilative capacity of River Bride, adequacy of storm attenuation, need for EIA, contravention of LAP and provision of playing fields.

## 4.0 **Planning History**

**ABP 302638-18 (17/7165)** – permission granted subject to 22 conditions for 71 dwellings and 8 no. serviced sites, creche and all associated ancillary development works including a roundabout at the entrance to the 7.8 hectare site of which this appeal site forms part.

## 5.0 Policy Context

### 5.1. Blarney Macroom Municipal District Local Area Plan 2017

Killumney/Ovens is identified as a key village with the site within the settlement boundary.

#### ***GO--01: General Objectives for Key Villages***

(c) In order to secure the population growth and supporting development proposed, appropriate and sustainable water and waste water infrastructure, that will help secure the objectives of the relevant River Basin Management Plan and where applicable the protection of Natura 2000 sites, needs to be protected in tandem with the development.

(d) Notwithstanding the scale of growth outlined in Table 4.1, in the absence of a public wastewater treatment plant, only the development of individual dwelling units served by individual treatment systems will be considered, subject to normal proper planning and sustainable development considerations.

***Objective No. DB-01*** - Within the development boundary encourage the development of up to 251 additional dwelling units during the plan period.

***Under Table 4.1*** - the normal recommended scale of any individual scheme is 50. An accompanying note states that “Individual schemes in excess of the recommended scale...may be considered where it is demonstrated that the overall scheme layout reinforces the existing character of the village and the scheme is laid out, phased and delivered, so as not to reflect a residential housing estate more suited to a larger settlement.

### 5.2. Natural Heritage Designations

None in the vicinity.



## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The 3<sup>rd</sup> party appeal by Concerned Residents c/o Murita Murphy, Sommerville can be summarised as follows:

#### **6.1.1. Effluent Disposal**

- The Council in its development plan has acknowledged that there is a lack of water and wastewater infrastructure in the Killumney/Ovens area. It continues to grant permission for development.
- The announcement on 05/05/21 that Irish Water is to undertake a project amalgamating and consolidating existing wastewater treatment infrastructure in the Killumney/Ovens area into a single WWTP with capacity to cater for existing development and projected growth is a scenario that was not assessed in the AA Screening. Prior to this announcement Irish Water informed the Council that it had no capacity to take the wastewater from the development. The existing Killumney WWTP has no room for expansion and is sited on the bank of the River Bride in a flood zone. The 2<sup>nd</sup> option is the Grange Manor WWTP which has been subject of regular complaints. It poses a health and safety hazard. Irish Water does not own Grange Manor WWTP.
- In application ref. 17/7165 (2017) the applicant stated that the Killumney WWTP would be upgraded within 9 months and the connection to Ballincollig WWTP would be completed within 16 months. As yet no application for the works has been prepared. The provision of infrastructure remains several years away.
- By granting permission in the absence of a public wastewater system with sufficient capacity, the Council has contravened objective GO-01(d). It also contravenes County Development objectives WS2-1 and WS 3-1.
- The Council has granted permission for 709 dwellings across 8 sites in Ovens. 6 of the 8 will connect to the Grange Manor WWTP. An EIAR should be prepared.

- Precedent set for refusal of permission due to lack of key infrastructure including wastewater (refs. ABP 306108, ABP 303509, ABP 237719).

#### 6.1.2. **Appropriate Assessment**

- The County Council did not carry out AA. It relied on the AA Screening report submitted by the applicant.
- AA Screening report has several fundamental and serious flaws.
  - It is based on misleading information that the sewerage from the proposal would be pumped to Ballincollig WWTP.
  - It considered impacts from available EPA data but failed to consider the impacts from non-EPA data. Several significant waste discharge licences issued by the Council discharging to the River Bride were not considered. Some relate to large developments.
  - It considered the impacts on the water quality status of the River Lee at Leemount Bridge (Moderate to Good, Level 3/4) and not River Bride (Good Level 4) where the treated effluent will be discharged. The impacts on the River Bride have not been considered. It is classified as being at risk.
  - The AA screening failed to undertake any assessment on what the cumulative impact is of all development in the Bride Lee catchment on the Cork Harbour SPA.
  - A major drinking water extraction exists on the River Lee. The impacts on the extraction point have not been considered. The Council has failed to consider the cumulative impacts from all additional developments consented that are yet to be built and that will discharge into the River Lee upstream of the extraction point.
  - Screening report fails to mention mature trees that have been felled and the knock-on impact on flora and fauna.

#### 6.1.3. **Compliance required with Water Framework Directive and the 2009 Surface Water Regulations**

- River Bride in Ovens has a water quality status Q – Good.

- The Council failed to establish the existing capacity on the River Bride to assimilate additional effluent and, therefore, in the absence of such information it has ignored the obligations of the Water Framework Directive. The individual and cumulative impacts of other large housing developments and whether there is assimilative capacity to cater for same (709 dwellings) has not been established.
- Data on BOD, ortho-phosphate and ammonia levels from all facilities discharging into the river is essential to establish their loading on the river and to establish how much assimilative capacity remains.
- Calculations provided for percentage assimilative capacity already consumed by existing discharges to River Bride (Killumney WWTP, Grange Manor WWTP, Essentra and Dell). The proposal coupled with 709 dwellings already granted permission will result in the deterioration in the receiving water quality and the downgrading of the river's status. Evidence of this deterioration is evident in the river.
- The County Council has not received an application for an upgrade of any wastewater infrastructure in the Killumney/Ovens area. It does not know the scale of any proposed infrastructure upgrade, its location, the volume of effluent to be discharged and the discharge point, the type of treatment proposed and, therefore, it has no knowledge on the scale of the impacts on the water quality of the River Bride. Modern and elaborate waste water treatment plants have limits to what standard the waste water can be treated to. This is backed by accredited scientific research.

#### 6.1.4. **Flooding**

- There is no evidence that the Council consulted with the OPW which is the competent authority for the implementation of the EU Floods Directive. Grange Manor WWTP is situated in the flood zone. Upgrading this plant at this location will knowingly lead to non-compliance with both the WFD and the Floods Directive. Killumney WWTP has also flooded.

#### **6.1.5. Other Issues**

- The planning authority did not obtain a report and consider the findings from the Council's Environment section, Architects Department or from the OPW.
- The proposal materially contravenes the Macroom Municipal District LAP and County Development Plan requirements in terms of density. The maximum scale for Killumney is 50 residential units and lower for sites considered 'peripheral'.
- The scale of the development is completely out of character with the local village.
- Consent from some landowners has not been obtained. The landowners advised the planning authority that their consent is not forthcoming.
- A number of mature trees have been felled. No tree felling licence was applied for.
- The proposed boundary wall along the northern boundary should be extended at the north-eastern boundary as illustrated and set back a 2.4m. topple distance.

#### **6.2. Applicant Response**

The submission by McCutcheon Halley on behalf of the applicant, which is accompanied by an amended Stage 1 AA Screening Report, can be summarised as follows:

##### **6.2.1. Compliance with Planning Policy**

- The scale of the proposal is permissible in the context of the existing village. It will offer a variety and range of building types to create identifiable areas of character to provide an organic and incremental development with a diverse public realm.
- The site is suitable for the density proposed. It is 250 metres from Killumney village centre and will be connected by a continuous public footpath and lighting.

- The Inspector in his assessment of the previous appeal under ref. ABP 302638 considered the merit of the proposed density and allowed flexibility to Objective GO-01 based on the proposed design and layout of the proposal.
- The gross and net densities of 14.7 and 18.5 units per hectare respectively, while below that set out in national guidelines, achieves a balance between the policies set out in the LAP and the said guidelines.
- While the development of up to 251 additional dwellings is encouraged within Killumney and the number of extant permissions within the village exceeds this figure it is important to point out that the actual number of completed units falls short of the LAP target. The actual rate of delivery/construction is less than 10% of permitted units. 3 of the 7 larger permissions which total 227 units (or 60% of the total permitted units) are due to expire in 2021. All 3 were subject to extension of duration of permission.
- The proposal is considered to be of an appropriate scale for its location.

#### **6.2.2. Effluent Disposal**

- Irish Water in the pre-connection enquiry had no objection to the proposal.
- On lodging the application it was proposed to service the development and other development lands in Killumney through the upgrade of the WWTP in Killumney from 110PE to 750PE and construct a new public sewer from Killumney to Ballincollig with a network of pumping stations.
- Following the planning authority's decision Irish Water confirmed on 05/05/21 that the WWTP in Killumney/Ovens has been selected for an upgrade and funding has been secured as part of the Small Towns and Villages Growth Programme therefore confirming a wastewater connection is feasible. The project will amalgamate and consolidate existing wastewater treatment infrastructure in the Killumney/Ovens area into a single WWTP with capacity to cater for the existing development and projected growth.
- The proposed dwellings are critically important to the applicant's ability to contribute to the upgrade.
- A condition has been attached precluding any occupation prior to the WWTP being constructed and commissioned.

#### **6.2.3. Impact on Water Supply and Water Quality**

- Irish Water is the governing body for water and wastewater services.
- In terms of surface water the proposed flows from the development are attenuated to estimated current greenfield run off rates. The rate of flow will be controlled and pollutants would be intercepted which will safeguard the quality and amount of water into the River Bride.
- The proposed surface water drainage system present good practice through SuDs measures.
- Water constraints in the Killumney area are noted. Funding will be provided which will allow adequate capacity to serve the proposed development within Killumney/Ovens.

#### **6.2.4. Adequacy of Documentation**

- The documentation submitted with the application was prepared by competent persons and is to a high standard.
- AA Screening report accompanies the application. An updated report accompanies the appeal submission. The findings remain unchanged.
- The County Council as the competent authority screened out the requirement for AA.
- The proposal for 72 units on a 4.9 hectare site does not trigger the requirement for an EIAR.

#### **6.2.5. Legal Issues**

- These issues were raised on the previous appeal. The Inspector concluded that there are no legal impediments to the Board assessing and determining the appeal.
- A letter of consent is not required from E & T Sweeney as all the proposed works are within the ownership of the applicant. Contrary to the claims an agreement was reached in relation to the provision of an alternative access.
- A letter of consent from Cork County Council was submitted with the application.

### 6.3. Planning Authority Response

None

### 6.4. Observations

Observations have been received from:

1. An Taisce
2. E. & T. Sweeney
3. Killumney Utd. FC
4. Peter Sweetman & Associates
5. Michael Murphy

The submissions can be summarised as follows:

#### 6.4.1. Appropriate Assessment

- AA Screening report is deficient.
- Council did not undertake AA screening itself.
- Council did not take account of the cumulative impacts on the Lee Catchment and failed to ascertain that the integrity of the Cork Harbour SPA would not be adversely affected.

#### 6.4.2. Water Framework Directive and Surface Water Regulations 2009

- Assimilative capacity of receiving water not determined. There is no capacity in the River Bride.
- Additional effluent load on the receiving water from section 4 discharges nearby not determined.
- Cumulative impact on the water quality of the River Bride from numerous housing developments in vicinity not considered.
- There will be a deterioration in the chemical and ecological status of the river. It has been scientifically established that the river cannot accommodate the effluent from the permissions already granted without a major adverse impact on its quality and WFD status.

- In the absence of certainty in the information submitted it is not possible for the Board to make a decision.
- It is not possible to assess the effects on the SAC and Fresh Water Pearl Mussel when there is no design of the new foul sewage infrastructure

#### 6.4.3. **Planning Policy**

- The proposal materially contravenes the LAP in terms of the recommended scale of housing development.
- It contravenes the LAP and County Development Plan which requires that development only proceed where wastewater infrastructure is available.
- It ignored objectives relating to protection of trees and woodland.

#### 6.4.4. **Access**

- When the lands were purchased Mr. & Mrs. Sweeny had an agreement to retain their property entrance onto the L2218. The entrance has been reconfigured through the roundabout. This is in breach of the original agreement, will devalue their property and will cause delays accessing and exiting.

#### 6.4.5. **Other Issues**

- Compliance with EU Floods Directive 2009 has not been evaluated. The Council failed to notify the OPW which is the competent authority.
- The provisions of Smarter Travel 2009 have not been addressed.
- Screening of development for EIA required.
- There is a lack of recreational facilities in the area. This deficiency should be addressed before further development is granted.



## 7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Planning History and Nature and Extent of Proposed Development
- Compliance with Planning Policy
- Layout and Design
- Site Servicing
- Other Issues
- Environmental Impact Assessment
- Appropriate Assessment

### 7.1. Planning History and Nature and Extent of Proposed Development

- 7.1.1. The site which has a stated area of 4.9 hectares forms part of a larger 7.8 hectare site on which permission for 79 residential units (71 dwellings and 8 serviced sites) was granted under ref. ABP 302638-18 (17/7165). The northern portion of the larger site on which the greater number of units is permitted is to remain unchanged. This appeal refers to the southern and eastern sections. It is proposed to replace the permitted 20 no. detached and semi-detached units and 8 no. serviced sites with 71 no. dwellings in a mix of designs. Thus, the residential scheme in its totality would have 123 dwelling units, an increase of 44 over that permitted.

### 7.2. Compliance with Planning Policy

- 7.2.1. The principle of housing on the site has been accepted on the site under file ref. ABP 302638-18. The grant of permission has not been contested and therefore stands. The substantive issue is whether the increase in the number of units by 44 is acceptable.
- 7.2.2. Killumney/Ovens is identified as a 'key village' in the Blarney Macroom Municipal District LAP. Objective No. DB-01 seeks to encourage the development of up to 251 additional dwelling units during the plan period within the development boundary. The LAP figure pertains to the period 2018-2024 and, as such, schemes completed prior to this would have been accounted for in calculating the housing

allocation. As noted by the Inspector on the previous appeal the LAP explains that the figure of 251 dwellings is neither a target to be reached nor an absolute maximum limit but rather an indication of the number of dwellings that could reasonably be accommodated within a settlement over the life time of the Plan.

- 7.2.3. Whilst permission has been granted for several residential schemes within the development boundary over the last 15 years, a number of which have the benefit of extension of duration of permission, to date only a small number have been constructed. From the details on file and including the existing permission on the site, in the region of 346 units have permission within the settlement. As to why the said permissions have not yet been realised to date is open to conjecture. The appellants consider that the absence of capacity in wastewater infrastructure is of relevance. I will address this matter in more detail below.
- 7.2.4. The LAP recommends that the scale of any individual scheme should be no greater than 50 units. Schemes in excess of this may be considered where it is demonstrated that the overall scheme layout reinforces the existing character of the village and the scheme is laid out, phased and delivered so as not to reflect a residential housing estate more suited to a larger settlement. The scheme as permitted providing for 79 units, and the current proposal for 72 units are, individually, above the said threshold. However I submit that the assessment of current proposal without due cognisance of the fact that it will form an integral part of a larger housing scheme is somewhat disingenuous. The scheme in its totality should be more appropriately considered. On this basis a housing estate comprising of 123 units will be almost 2 ½ times the above referenced 50 unit threshold.
- 7.2.5. I note that there are other available zoned lands within the development boundary with the appeal site located at a more peripheral location to the centre of Killumney village. I find it difficult to conclude that the development in conjunction with that permitted, does not contravene the provisions of the Local Area Plan in relation to the scale of development which is permissible, including the 50 unit guide and the overall number of units. Whilst the LAP makes it clear that the new growth figure is not a target it is indicative of the number of additional dwellings which could reasonably be accommodated within a settlement over the lifetime of the Plan. A grant of permission in this instance would further exacerbate the extent of development permitted above that identified as appropriate for the village.

7.2.6. The proposal for 72 dwellings on a 4.9 hectare site would equate to a density of 14.7 units per hectare. In terms of the overall scheme, 123 units on 7.8 hectares equates to a gross density of 15.76 units per hectare. I estimate that the scheme will have a net density of in the region of 16.5 units per hectare. This represents a marginal improvement over that originally permitted. I would concur with the Inspector in his assessment of the previous appeal that whilst the emerging pattern of new housing in Killumney and Grange would be insufficiently dense, it is not considered that the subject site is the one upon which to correct this pattern. Given the location and context of the site, I conclude that the density of the proposal would be appropriate.

### **7.3. Layout and Design**

7.3.1. The site comprises the southern and eastern most fields of the overall site. The access arrangements as permitted are unchanged entailing a re-configuration of the existing T-junction of the Crossbarry and Killumney roads as a roundabout. with access to the dwelling bounding the site to the east to be accommodated from same. It is considered that the proposed arrangement will be able to accommodate the additional vehicular movements arising from the increase in residential units.

7.3.2. The design and layout of the scheme takes its cues from the scheme as permitted and provides for a greater mix of dwelling types than permitted. The scheme as a whole would provide for:

- 63 no. 4 no. bed units (designs A, B & C ) - 52%
- 40 no. 3 no. bed units (designs D and E) – 32%
- 2 no. bed units (design F) – 16%

7.3.3. The recommended space provision and room sizes set out in Table 5.1 of the Quality Housing for Sustainable Communities: Best Practice Guidelines are met or exceeded with each dwelling house to be served by sufficient private open space.

7.3.4. The layout is considered acceptable with the creche to be retained in its original position. The scheme both as permitted and proposed along the northern boundary to the appellants' properties is not altered. A 2.4 metre high stone wall is required by way of condition attached to the extant permission and there is no objection to the extension of this wall along the north-eastern most corner at the roundabout access. Under the proposal, the treelined hedgerow along the eastern boundary would be

retained and so the site would be largely screened from view along Crossbarry Road.

- 7.3.5. The interim approach to Cork County Council's Recreation and Amenity Policy June 2019 indicates that open space should generally be at least 12-18% of a site. Whilst the applicant in the supporting statement refers to the current proposal, only, as I have noted previously it will form an indistinguishable element of the overall scheme and it must be addressed in its totality; an approach that the interim approach document specifically advocates (see note to Table 1). The document states that for schemes of 100 units and greater developers will be expected to make greater provision for on-site recreational facilities to cater for the needs of the development including play areas for young children and facilities for older age groups. Having regard to Table 1 neighbourhood and local play areas are required at a ratio of 1 to 100 units. This is met within the proposed scheme.

#### **7.4. Site Servicing**

##### Waste Water

- 7.4.1. As per the details accompanying the application the site is to connect to the existing WWTP in Killumney. From the details available on the EPA website dating back to 2011 [https://epawebapp.epa.ie/licences/lic\\_eDMS/090151b2803db394.pdf](https://epawebapp.epa.ie/licences/lic_eDMS/090151b2803db394.pdf) the treatment plant was granted a discharge authorisation under ref no. A0435-01. The WWTP discharges to the Bride River (Cork). In same it is noted that based on the nearest EPA water quality monitoring station, 3.2km downstream, the biological Q-value is Q4 (sampled in 2008).
- 7.4.2. In the interim Irish Water has assumed responsibility for water and waste water facilities although, as yet, the WWTP is not covered in the latest Irish Water Annual Environmental Report 2020.
- 7.4.3. There is somewhat of a disconnect in Irish Water's correspondence with the planning authority. Whilst it has no objection to the proposal it states that there is insufficient capacity in the wastewater infrastructure in Killumney to facilitate the connection and that upgrades to existing infrastructure will be required to create capacity.
- 7.4.4. At the time of the Board's assessment of the previous appeal on the overall lands information as presented by the applicant was before it stating that Irish Water proposed to construct a new public sewer from Ballincollig to Killumney over a 16-

month period and to upgrade the Killumney WWTP from 110 PE to 750 PE over a 9-month period. 2.5 years has elapsed since the Board's decision and no improvement works have commenced.

- 7.4.5. Since the lodgement of the appeal Irish Water in an announcement on 05/05/21 stated that an upgrade of the wastewater treatment plant in Killumney/Ovens has been selected as part of the Small Towns and Villages Growth Programme (in which 13 schemes have been listed). From the high level project summary available the project will amalgamate and consolidate existing wastewater treatment infrastructure in the Killumney/Ovens area into a single WWTP with capacity to cater for the existing development and projected growth. Further details are not available save for the press statement stating that the project will now continue through the next stages including design, detailed planning, procurement and approvals with further updates on the budget and timelines for delivery to be provided in due course.
- 7.4.6. I consider that a condition precluding the occupation of any dwelling until the WWTP system is constructed and operational is only an appropriate mechanism where a reasonable timescale is available. I submit that this is not available in this instance and to assume that the works are imminent as a consequence of the above statement would be somewhat short-sighted in view of the necessary processes to be fulfilled first. Thus, having regard to the absence of a timescale for the upgrading of the treatment works, the risk of slippage and the duration of the permission, I would recommend that permission for the development is refused on the grounds of prematurity.
- 7.4.7. The 3<sup>rd</sup> party appeal provides a detailed submission on the impact on the receiving waters of the River Bride to accommodate the additional effluent loading, its assimilative capacity and compliance with the Water Framework Directive. I submit that these matters will be for Irish Water to address in its preparation of the WWTP scheme upgrade.

#### Water Supply

- 7.4.8. The LAP notes that the public water supply from the Ballincollig/Inniscarra Scheme which is part of the Harbour and City Water Supply Scheme has watermain network and capacity of pumping station issues that require to be rectified in order to cater for future development.

7.4.9. Irish Water in its submission to the planning authority notes that there is insufficient capacity in the water network to supply the development and that upgrades will be required. It has received numerous pre-connection enquiries for significant housing development in the area. A water network model has been undertaken which highlights various bottlenecks in the water network to support this and other developments. The upgrades are to be undertaken as the various developments come on stream.

## **7.5. Other Issues**

- 7.5.1. Issues in terms of relevant landowners' consents raised in this appeal were also subject of assessment on the previous appeal. The appellant draws attention to the north-easternmost part of the site, which would be developed to provide a roundabout at the junction between Killumney Road and Crossbarry Road. It states that one household has an interest in this part of the site and they have not given their consent to the current application. This pertains to the provision of a footpath outside their driveway. The applicant has responded by stating its understanding that the said part of the site is under the control of Cork County Council, which has consented in writing to the current application, a copy of which accompanies the application. On balance I consider that sufficient detail in terms of consent accompanies the application.
- 7.5.2. In terms of the dwelling to the east of the site there appears to be a lack of consensus as to the access arrangements which were agreed and attached to the purchase of the lands. The occupiers contend that they never agreed to an access from the housing estate road whilst the applicant states that the said access arrangements were a condition attached to the purchase of the site. This matter was raised in the previous appeal. As noted by the Inspector in his assessment of the case the said dwelling is currently accessed directly off Crossbarry Road and that this means of access could continue in the presence of the proposed development. Thus, while the alternative would be preferable from traffic management/road safety perspectives, its absence would not maroon the said dwelling house.
- 7.5.3. An observer expresses concern that Killumney United Football Club is still waiting for a playing pitch. The LAP addresses the provision of such a pitch under Special

Policy Area X-01, which relates to a 12.61 hectare site at some remove to the east of the site.

- 7.5.4. The removal of mature trees from the site has been raised. I am not aware of any tree preservation orders that pertain to the site. The issue of the need or otherwise for a tree felling licence is a matter more appropriately addressed to the relevant authority.

## **7.6. Environmental Impact Assessment**

- 7.6.1. An Environmental Impact Assessment Screening report was not submitted with the application
- 7.6.2. The proposed development comprises alterations to part of an already permitted residential development for 79 dwellings under ref. 302638-18. The current proposal for 72 dwellings will result in an overall scheme comprising of 123 dwelling units on a 7.8 hectare site.
- 7.6.3. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.
- 7.6.4. The number of dwelling units proposed at 72, and cumulatively with that permitted at 123 units, are well below the threshold of 500 dwelling units noted above. The site, of itself, has a stated area of 4.9 hectares and forms part of a larger 7.8 hectare site. Whilst within the development boundary of Killumney is not in a business district. The site is therefore below the applicable threshold of 10 hectares.
- 7.6.5. The proposal for 72 dwellings is located within the development boundary of Killumney on which there is an extant permission for a residential scheme. The site comprises a number of fields under grass with hedgerows delineating the boundaries. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage. An increase in the number of dwelling units from that permitted will not have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human

health. The issues arising in terms of capacity in the wastewater treatment system to accommodate the development has been dealt with above. The site is not within a European site. The issues arising from proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive. The application is accompanied by an Architectural Design Statement and Heritage Impact Assessment. These address the issues arising in terms of the sensitivities in the area.

7.6.6. Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location and context of the site and pattern of development in the surrounding area,
- the location of the site on lands within the development boundary of Killumney/Ovens under the provisions of the Blarney Macroom Municipal District Local Area Plan 2017 and the results of the strategic environmental assessment of the Blarney Macroom Municipal District Local Area Plan undertaken in accordance with the SEA Directive (2001/42/EC).
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended)

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report was not necessary.



## **7.7. Appropriate Assessment**

### ***Appropriate Assessment – Screening***

- 7.7.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

### ***Background on the Application***

- 7.7.2. The applicant has submitted a Stage 1 AA Screening Report. An amended report was submitted with the appeal response. The report was prepared by McCutcheon Halley with the amended report dated June 2021. The report includes a description of the proposed development, the methodology used, the receiving environment and a screening assessment and screening conclusions.
- 7.7.3. It concludes that the report is based on the best available scientific information and the information provided by the client. It states that the report shows that the proposed residential development poses no risk of likely significant effects on Cork Harbour SPA either alone or in combination with other plans and projects, and therefore does not require progression to Stage 2 appropriate assessment. Based on this conclusion it is submitted that the competent authority can determine based on objective scientific information, that an appropriate assessment is not required.
- 7.7.4. The Cork Harbour SPA (site code 004030) was considered in the Screening Report.
- 7.7.5. The application is also accompanied by a Construction Management Plan.

### ***Screening for Appropriate Assessment – Test of Likely Significant Effects***

- 7.7.6. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on European site(s).
- 7.7.7. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European site.

### ***Brief Description of the Development***

- 7.7.8. The applicant provides a description of the project in section 4 of the screening report. In summary, the development comprises of 72 dwellings. It entails alterations to part of a larger permitted residential scheme and would ultimately provide for a total of 123 units on a 7.8 hectare site. Foul waste is to discharge to the waste water treatment plant in Killumney. Surface water will incorporate SuDs techniques and, following attenuation, is to discharge to the River Bride.
- 7.7.9. The development site is described in section 1.2 of the screening report. It comprises of two fields within an undulating topography within the development boundary of Killumney/Ovens. The field boundaries are delineated by hedgerows, some of which have mature trees. No terrestrial habitats within the footprint of the proposed development have affinity to qualifying interests habitats or offer supporting value to qualifying interests or special conservation interests of European sites.
- 7.7.10. The River Bride is approx. 100 metres to the north on the opposite side of the Killumney Road with flows from west to east. It joins the River Lee to the east of Ballincollig which then flows into Cork Harbour. There is a stream on the opposite side of the Crossbarry Road to the east which joins the River Bride to the north-east of the site.

### ***Submissions and Observations***

- 7.7.11. Both the 3<sup>rd</sup> party appeal and observations received on the proposed development consider that the AA Screening report is deficient and, in the absence of certainty as to the proposed waste water treatment system which is to be upgraded, that it is not possible for the Board to make a decision.

### ***European Sites***

- 7.7.12. I consider that Cork Harbour SPA is the only Natura 2000 site which can reasonably be described as being within the possible zone of influence of the proposed development. It is approx. 15.9km to the east of the appeal site at its nearest point. A possible connection between the development via the River Bride has been described above.

<b>Cork Harbour SPA (Site Code 004030)</b>		
<b>Conservation Objectives and Qualifying Interests / Special Conservation Interests</b>	<b>Distance from Proposed development</b>	<b>Connections (source, pathway, receptor)</b>
<p>CO – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p> <p>Qualifying Interests/Species of Conservation Interest: Little Grebe (<i>Tachybaptus ruficollis</i>) [A004], Grey Plover (<i>Pluvialis squatarola</i>) [A141], Great Crested Grebe (<i>Podiceps cristatus</i>) [A005], Lapwing (<i>Vanellus vanellus</i>) [A142], Cormorant (<i>Phalacrocorax carbo</i>) [A017], Dunlin (<i>Calidris alpina</i>) [A149], Grey Heron (<i>Ardea cinerea</i>) [A028], Black-tailed Godwit (<i>Limosa limosa</i>) [A156], Shelduck (<i>Tadorna tadorna</i>) [A048], Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157], Wigeon (<i>Anas penelope</i>) [A050], Curlew (<i>Numenius arquata</i>) [A160], Teal (<i>Anas crecca</i>) [A052], Pintail (<i>Anas acuta</i>) [A054], Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179], Shoveler (<i>Anas clypeata</i>) [A056], Common Gull (<i>Larus canus</i>) [A182], Red-breasted Merganser (<i>Mergus serrator</i>) [A069], Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183], Oystercatcher (<i>Haematopus ostralegus</i>)</p>	c.15.9km to the east of the site at its nearest point	<p>Surface water discharge to River Bride.</p> <p>Effluent disposal to Killumney WWTP which discharges to River Bride</p>

[A130], Golden Plover ( <i>Pluvialis apricaria</i> ) [A140], Redshank ( <i>Tringa totanus</i> ) [A162], Common Tern ( <i>Sterna hirundo</i> ) [A193] and Wetlands and [A999]		
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### ***Identification of likely effects***

7.7.13. I consider that the elements of the project which may give rise to the impacts on the European site are:

#### *Uncontrolled surface water runoff during construction phase:*

7.7.14. The AA- Screening report is silent on the proposed measures to be undertaken at construction phase. Standard best practice construction methods for urban sites are set out in the Construction Management Plan and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.

#### *Surface Water Discharge to River Bride:*

7.7.15. Surface water from the impervious areas of the development are to be collected in a network of surface water sewers and directed to an underground attenuation storage area in the open space in the north-eastern portion of the site. A 2<sup>nd</sup> smaller attenuation area is to be provided in the open space adjoining the Killumney Road to attenuate flows from the access road. Installation of grit traps, grip sump and class 1 Bypass Separator upstream of the attenuation area are proposed. Controls of outflow from the attenuation areas to be achieved using a Hydrobrake unit and surface water will discharge at the existing greenfield rate calculated to be 23.2 l/s. These surface water control and discharge measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.

#### *Increased loading to wastewater treatment system:*

7.7.16. The waste water treatment plant serving Killumney does not have sufficient capacity to the accommodate the development. An upgrade of the wastewater treatment

plant in Killumney/Ovens has been selected as part of the Small Towns and Villages Growth Programme by Irish Water. From the high level project summary available the project will amalgamate and consolidate existing wastewater treatment infrastructure in the Killumney/Ovens area into a single WWTP with capacity to cater for the existing development and projected growth. Further details are not available save from the press statement stating that the project will now continue through the next stages including design, detailed planning, procurement and approvals with further updates on the budget and timelines for delivery to be provided in due course. It is likely that the WWTP will discharge to River Bride which is currently the case.

7.7.17. I consider that the issues arising in terms of the obligations of the Habitats Directive will be required to be addressed by Irish Water during its advancement of the project and the onus will be on same to provide the information necessary for the relevant competent authority to adjudicate as to whether the proposal would/would not adversely affect the integrity of the European site. The requirements of the Water Framework Directive and the Surface Water Regulations will also be required to be assessed.

7.7.18. However in the absence of details on the upgrade of the treatment plant above I submit that the Stage 1 AA Screening Report cannot definitively conclude that the proposed development would not have a significant negative impact on the Conservation Objectives of the European Site.

### ***Screening Determination***

7.7.19. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 004020, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

## **8.0 Recommendation**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. It is considered that the proposed development would be premature by reference to the existing capacity deficiencies in the Killumney/Ovens waste water treatment plant to which connection is proposed and the period within which this constraint may reasonably be expected to cease. In the absence of improved wastewater treatment capacity the proposed development would be prejudicial to public health and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development is to discharge to the Killumney/Ovens Wastewater Treatment Plant, with a primary discharge to River Bride, which flows into the River Lee and has a hydrological connection to the Cork Harbour SPA (site code 004020). In the absence of the upgrade of the treatment plant above its existing capacity the Stage 1 AA Screening Report cannot definitively conclude that the proposed development would not have a significant negative impact on the Conservation Objectives of the European Site. It is considered, therefore, that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

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**Pauline Fitzpatrick**

**Senior Planning Inspector**

**August, 2021**