



An  
Bord  
Pleanála

## Inspector's Report 310314-21

### Development

Mixed use development with a total gross floor area of 10,383.41sq.m comprising a single-storey childcare facility and 84 no. 2-storey dwelling houses with associated resident and visitor car parking, access roads, public open space. Each dwelling unit and the childcare unit will have roof mounted PV panels. A new vehicular and pedestrian access from Dundrum Road and all associated site works.

### Location

Dundrum Road, Brodeen, Tipperary Town, Co. Tipperary

### Planning Authority

Tipperary County Council

### Planning Authority Reg. Ref.

20237

### Applicant(s)

Kingscroft Development Ltd.

### Type of Application

Planning permission

### Planning Authority Decision

Refuse permission

### Type of Appeal

First Party

<b>Appellant(s)</b>	Kingscroft Development Ltd.
<b>Observer(s)</b>	Tom & Anne Hickey
<b>Date of Site Inspection</b>	11 <sup>th</sup> August 2021
<b>Inspector</b>	Mary Kennelly

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## **1.0 Site Location and Description**

- 1.1.** The site is located on Dundrum Road, in the eastern suburbs of Tipperary Town. It is located to the south of the junction of Rosanna Road with Dundrum Road (R661) and to the north of the N74 (Cashel Road). It is a suburban area on the edge of the built-up area with several greenfield sites and small housing estates. The site is located approx. 800m from the town centre. There are several detached dwelling houses on the opposite side of Dundrum Road as well as a Halting Site.
- 1.2.** The site area is given as 0.39ha. It consists of vacant greenfield site with frontage of c.115m to Dundrum Road on its western boundary. It is bounded to the north by a further vacant site (zoned for housing) and a single detached 2-storey house on the corner with Dundrum Road (Observer T & A Hickey). The southern and rear boundaries of this site abut the site which are defined by a masonry wall and mature tree planting. The south-western boundary is with an established housing development, Marian Terrace, and the Eastern and Southern boundaries adjoin the St. Michael's Cemetery.

## **2.0 Proposed Development**

- 2.1.** It is proposed to construct a mixed-use development totalling 10,383m<sup>2</sup> comprising a single-storey childcare facility and 84 no. 2-storey dwelling houses. The proposed creche (162.45m<sup>2</sup>) is located adjacent to the Dundrum Road frontage and includes 553m<sup>2</sup> of private outdoor play area and 12no. dedicated parking spaces. It also includes PV mounted panels on the roof.
- 2.2.** The proposed dwellings include 4 no. 4-bed detached dwelling houses which are distributed around the site. The majority of the proposed houses are semi-detached, (16 no. 4-bed, 46 no. 3-bed and 6 no. 2-bed) and there are 12 no. 2-bed terraced dwellings. Two parking spaces are provided for each of the detached and semi-detached dwelling houses and 1.5 spaces for each of the terraced houses. all houses would have roof-mounted solar panels and it is proposed to provide 36no. visitor parking spaces.
- 2.3.** The density of the proposed development is given as 21.5 units/ha with a plot ratio of 0.27 and site coverage of 16%. Private amenity space is provided in the form of front

and rear gardens and ranges from 53m<sup>2</sup> to 395m<sup>2</sup>. Communal/public open space is provided at a rate of c.18.22% of the site area in the form of a hierarchy of spaces, including a large central area (4,432m<sup>2</sup>) and secondary areas at the front of the site adjacent to the proposed Creche and the Dundrum Road, with smaller pockets distributed within the site. The proposed vehicular entrance is centrally located on the road frontage with the proposed creche to the south and POS to the north of the entrance road.

**2.4.** The proposal includes a new vehicular/pedestrian entrance from Dundrum Road, internal roads, pedestrian walkways, boundary treatment, hard and soft landscaping. Services include 2 no. below ground attenuation tanks and site lighting. It is proposed to connect to the public water and wastewater systems and surface water will discharge to the public sewer. Part V proposals include the transfer of 8 no. houses which comprise 4 no. 3-bed units and 4 no. 2-bed units.

**2.5.** The application was accompanied by: -

- A Planning Report prepared by The Planning Partnership
- An Engineering Services Report prepared by O'Connor Sutton Cronin
- A Part V Proposal
- A Development Impact Assessment Report prepared by the Planning Partnership

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for two reasons. The main substance of the reasons for refusal was based on the following –

- 1. Premature development pending determination of design option for the N24 Cahir to Limerick Junction Project** – The protection of the N24 Cahir to Limerick Junction Road Project is an objective of both the Tipperary Town and Environs Development Plan (2013 as extended) and the Regional Spatial Economic Strategy for the Southern Region. Policy INF2 of the Plan also seeks to ensure the protection of the reservation corridor for the re-alignment

of the N24 and that it remains free from development. It is a further policy of the Plan (T12) to seek the implementation of the Strategic Transport Priorities identified in the Regional Planning Guidelines by reserving the corridors free from development that might compromise the future road scheme. Having regard to the location of the site within the study corridor for this road project and to the nature and scale of the proposed project, it was considered that the proposed development would be premature pending the determination of the preferred alignment option for this road project, would materially contravene Policy INF 5 of the Town Development Plan and would be contrary to the proper planning and sustainable development of the area.

2. **Failure to submit a Road Safety Audit for the development** – having regard to Policy DM1 of the Tipperary Town Development Plan 2013 (as extended) and the failure of the applicant to submit a Road Safety Audit, and to the precedent that that would set for similar development in the vicinity, it was considered that the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users. The proposed development is therefore contrary to Policy DM 1 of the Tipperary Town and Environs Development Plan and to the proper planning and sustainable development of the area.

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

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

The Area Planner's report (29/06/20) considered that the Development Impact Assessment, which included an assessment of the integration of the development with the receiving environment, the social, physical and services infrastructure was satisfactory. The proposed development was also considered to be in accordance with the Residential Zoning for the site and with the guidance on density. However, there were a number of issues raised in respect of the layout and design of the development.

It was considered that the housing units and creche should front onto the public road rather than the public open space and that the internal road layout results in a car dominated layout. This would provide for a better sense of place and would also

rationalise the public open space. Furthermore, it was considered inappropriate for the amenity area associated with the creche to front onto the public road. Other issues of concern included separation distances between houses, orientation of some of the units which overlook the cemetery and of some north-facing rear gardens, variable FFLs which could give rise to overlooking, provision of rear access for bins in the terraced units etc. EIA and AA were screened out.

The Area Planner concluded that FI was required in respect of the issues identified above as well as other issues raised in the various submissions and internal reports. FI was requested on the 30<sup>th</sup> of June 2020 and a request for an extension of time was received on the 30<sup>th</sup> of November 2020. The deadline was extended until the 7<sup>th</sup> April 2021.

### 3.2.2. Other Technical Reports

District Engineer (12/05/20) – Further information required in respect of the extent of works to be undertaken at the site entrances, the pervious surface proposed for the proposed carparking spaces, clarity regarding surface treatments outside proposed dwellings, additional details regarding the proposed drainage system and proposals for the existing ESB line that crosses the site. In addition, it was requested that the applicant submits a Road Safety Audit including proposals for the removal and replacement of the existing ramps, a Public Lighting Plan, revised design calculations and drawings restricting outflow from the attenuation tanks to 4.5l/sec/ha and revised boundary treatments comprising 2m high block walls.

Housing (27/04/20) – No objections.

Tipperary Childcare Committee (07/04/20) – no objection.

### 3.3. Prescribed Bodies

**Irish Water** (02/09/20) – no objection subject to conditions including that connection agreements must be signed prior to commencement of development. In addition, the following matters were specifically addressed –

- The applicant is asked to increase the proposed watermain in the area of the public road from 100 to 150mm and also to increase the proposed diversion

pipe size from 100mm to 150mm. The pipe size and layouts within the development lands are to remain the same.

- The applicant to extend the Surface Water Discharge pipe (at a size of 375mm diameter by approx. 220m to discharge to the Surface Water Drain at SWMH0022485 at the gable of 130 Dundrum Drive. This is designed to limit the impact on the Combined Sewer System (and to limit the effect on the Tipperary Combined Sewer system).

Email correspondence indicates that these matters were agreed with the applicant

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

- 3.4.1 Two submissions were received from third parties which included a submission from the residents of Marian Park and from the appellants. The main concerns raised related to inadequate boundary treatment proposals and lack of adequate separation distances between the proposed dwellings and the adjoining properties.

### **3.5. Further information and responses**

- 3.5.1. FI was received on the 6<sup>th</sup> April 2021 which included revisions to the proposed development. A detailed response to each item is included in the covering letter from the applicant's agent (6/4/21). This was considered to be significant further information and was required to be republicized.
- 3.5.2. In response to republication of the further information, additional internal and external submissions were made as follows:

- 1. Transport Infrastructure Ireland (19/04/21)** – having regard to the official policy on the control of development as set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), it is considered that the proposed development would adversely affect the operation and safety of the national road network for the following reason -

The proposed development is located within an area currently under consideration as a route option for a national road improvement scheme and hence the application is premature pending the determination of the route. A grant of permission, in this instance, is considered to be at

variance with the provisions of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012, Section 2.9 refers.

**2. Mid-West National Roads Design Office (19/04/21) – The N24 Project**  
Team made the following comments -

The proposed development is within the constraints study area for the N24 Cahir to Limerick Junction Project. As the development of options for the project is ongoing, any proposed development in the area is reviewed in the context of suitability for the development of potential options at this location, this application is deemed to be premature at this point in time.

**3. Tipperary County Council District Engineer (28/04/21) The District**  
Engineer made the following comments

Site Entrance – the existing footpath along the boundary wall will need to be replaced and associated services undergrounded.

Road Safety Audit – it is critical that an RSA is conducted at the earliest possible stage and the recommendations incorporated into the design. The applicant was requested to submit one but has not provided one to date. The findings of a Road Safety Audit may have a direct impact on the design of the scheme and as such, it would be premature to grant permission for the development in advance of a road safety audit being completed, notwithstanding the ability of the P.A. to attach conditions to any permission.

Public lighting – although a public lighting layout plan was submitted in response to the request for FI, it will be necessary to submit a public lighting design to justify the proposed layout plan. This has not been provided.

### **3.6. Recommendation**

- 3.6.1. The Area Planner recommended **refusal** of the proposed development, and the decision of the planning authority was generally in accordance with this recommendation.

## **4.0 Planning History**

### **4.1. On subject site**

- 4.1.1. **PL23.225054 – (PA Reg. 07/490)** – Planning permission granted by the Board (2008) following a first party appeal against refusal for modification of a previously permitted scheme (06/348) of 99 dwelling units and a creche on the site (with access off Dundrum Road). The Inspector had generally agreed with the P.A., but the Board had sought further information and granted permission for a revised scheme subject to 19 conditions.
- 4.1.2. **P.A. Reg. Ref. 06/348** – planning permission granted for 99 dwelling units and a creche and extension of duration of permission granted.

### **4.2. On adjoining sites**

- 4.2.1. **PA Ref. 06/1566** – Permission granted for housing development and extended by grant of duration of permission (08/409) on site to north/north-east.
- 4.2.2. **PA Ref.20/1383** – Application pending for development on adjoining site to north/north-east comprising nursing home and housing units – awaiting response to FI request (extended until 24/10/21). FI request includes (Item 1) advice that site is located within the route study corridor for a National Road Scheme and as such may be premature. The applicant is asked to liaise with the TII and the MWRDO.
- 4.2.3. **PA Ref. 04/415** – Permission granted on site to north-east for 50 serviced sites.

## **5.0 Policy Context**

### **5.1. National Planning Framework**

- 5.1.1. **NPO 3b** – Deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements.
- 5.1.2. **NPO 4** – Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

- 5.1.3. **NPO33** – Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- 5.1.4. **NPO 35** – Increase residential density in settlements, through a range of measures including reduction in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building height.

## **5.2. Sustainable Residential Developments in Urban Areas 2009 and Best Practice Urban Design Manual, Parts 1 & 2 (2009)**

- 5.2.1. These guidelines provide advice on matters such as density, layout and site-specific standards for the protection of amenity and the promotion of good quality spaces in accordance with best practice in urban design.

## **5.3. Design Manual for Urban Roads and Streets (2013)**

These statutory guidelines focus on the role and function of streets within urban areas where vehicular traffic interacts with pedestrians and cyclists. The manual generally seeks to achieve better street design in order to encourage more people to choose to walk, cycle and use public transport by making the experience more pleasant and safer, and thereby promoting more healthy lifestyles. It outlines practical design measures to support and encourage more sustainable travel patterns in urban areas. These include guidance on materials and finishes, street planting, design and minimum width of footways (including minimum widths, verges and strips), design and location of pedestrian crossings, kerbs and corner radii and shared surfaces.

## **5.4. Regional Spatial and Economic Strategy for the Southern Region 2020**

The priorities for the Limerick Shannon Metropolitan Area Transport Strategy (6.3.6.4) and for the Waterford Metropolitan Area (6.3.6.5) sets out the transport investment priorities for the region. One of the objectives is to support intra-regional connectivity with these metropolitan areas and enhanced regional connectivity through improved average journey times by road between the regional cities of Cork, Limerick and Waterford, which includes the enhancement of the N24 between Limerick and Waterford.

**RPO 167 – National Roads Projects at pre-appraisal stages to achieve NSO: Enhanced Regional Accessibility – Part (A)** Projects identified under the NDP and Pre-Appraisal Stages. These projects are subject to robust feasibility studies and site/route selection to reduce impacts on the environment and required appraisal, planning and environmental assessment processes. The projects listed included the N24 Waterford to Cahir/Cahir to Limerick Junction

## **5.5. South Tipperary County Development Plan 2009-2015 as extended**

- 5.5.1. This Plan was the subject of an update in 2017. Section 1.6 of the 2017 update refers to the relationship between the CDP and Town Development Plans, including the Tipperary Town and Environs Development Plan 2013. It is stated that the Town Development Plans will remain the statutory plans for these areas until a review and preparation of Local Area Plans take place.
- 5.5.2. Relevant chapters include Chapter 4 Planning and Sustainable Communities, Chapter 9 Transport, Water Services and Environmental Management, and Chapter 10 Development Management Standards.
- 5.5.3. Relevant policies include
  - Policy SC2 – Sustainable Residential Development in Towns and Villages
  - Policy SC3 – Delivery of social Housing in accordance with Part V of the Act
  - SC7 – Childcare Facilities
  - T12 – National Road Infrastructure Programme
- 5.5.4. It is noted that the N24 Waterford to Limerick Dual Carriageway is identified in Section 9.3.1 as a National and Regional Infrastructure Priority, which is a project that was previously identified in the SERPG.

## **5.6. Tipperary Town and Environs Development Plan**

- 5.6.1. The site is zoned **New Residential**, the objective for which is “To provide for new residential development. Density on such sites shall be determined by the nature of the site and proximity to the town centre.” The site is part of the Phase 1 Residential zoning for the town where it is the policy to facilitate housing development subject to relevant criteria set out in the plan. Relevant housing policies include -

## **HSG1 New Residential Development**

## **HSG2 Urban Densities**

## **HSG3 Residential Amenity**

## **HSG6 Childcare Facilities**

- 5.6.2. **Chapter 2 – Strategic Vision** - Infrastructure (2.2.4) identifies the N24 passing through the town as problematic in terms of congestion and associated health and safety, aesthetic and economic issues. Thus, the 'N24 Realignment' is identified as a major priority and it is stated that if the project does not go ahead, the Council will progress an Inner Relief Road to assist with traffic reduction in the interim.
- 5.6.3. **Chapter 5 Infrastructure** – The N24 and Traffic congestion is addressed at 5.1.2. The Principles Map shows the Inner Relief Route to the north of the town and the Radial Interconnector to the south of the town.

**Policy INF 2 - Protection of Reservation Corridor for the Realignment of the N24** – It is the policy of the Council to ensure that the reservation corridor for the proposed By-Pass of Tipperary Town remains free from development and the Planning Authority will support NRA road development proposals.

**5.1.4 - Northern Inner Relief Route** – An indicative reservation corridor will be retained in this Plan for the delivery of the Northern Inner Relief Route to link the N24 Waterford-Limerick National Primary Route to the R497 Tipperary Town - Donohill Regional Road, the R601 Tipperary town – Dundrum Regional Road and the N74 Tipperary Town – Cashel National Secondary Route. However, this reservation corridor is indicative only.

**Policy INF 5 – Protection of Reservation Corridors** – It is the policy of the Council to ensure that the reservation corridor for the Proposed Radial Interconnector Route and the Northern Inner Relief route remains free from development.

- 5.6.4. **Chapter 9 – Development Management** includes guidance on Urban Design and Residential Development.

## **5.7. Transport Infrastructure Ireland 2020 List of Projects**

- 5.7.1. The Government (through the National Planning Framework) sets the overall framework for capital investment in Ireland, including the identification of specific National Roads projects (Active List) to be progressed during the period of the Plan. Transport Infrastructure Ireland is charged with delivering Government policy. The TII Active List (September 2020) includes the N24 Improvement Scheme between Waterford and Cahir and between Cahir and Limerick Junction as a project which is in the Early Planning – Stage 1: Concept and Feasibility stage.

## **5.8. Natural Heritage Designations**

Lower River Suir SAC (002137) – lies within 10km.

Moanour Mountain SAC (000646) – lies within 10km.

Galtee Mountains SAC (001058) – lies within 10km.

Philipstown Marsh SAC (001847) – lies within 10km.

Lower River Shannon SAC (002165) – lies within 15 km.

## **6.0 The Appeal**

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

The first-party appeal is against the refusal of planning permission. It was accompanied by

- A Stage 1 Road Safety Audit together with revised site layout plan of entrance, footpath and roads
- A public street lighting plan
- A Boundary Treatment schedule and associated site sections.

The main points raised may be summarised as follows:

### **REFUSAL REASON NO. 1 – PREMATURE DEVELOPMENT**

- **No Material Contravention of Development Plan** – it is strongly refuted that the proposed development constitutes a Material Contravention the Tipperary

Town and Environs Development Plan for the area. The site is zoned New Residential (R1) in this Plan and the proposed development is wholly in accordance with the zoning objective for this zone. The proposed development would provide housing on fully serviced and undeveloped residentially zoned lands which could be considered in-fill, and which previously benefitted from a grant of planning permission for 99 housing units and a childcare facility. Thus, the land-use zoning objective would not be prejudiced, there would be no departure from any fundamental provision of the Tipperary Town and Environs Development Plan and the proposed development would not materially contravene any of the policies or objectives of that Plan.

- **Compliance with National and Regional Policy** - National and regional policy such as the NPF, the Sustainable Residential Development in Urban Areas Guidelines and the Regional Spatial Economic Strategy, encourage sustainable development at higher densities in order to consolidate development and provide for less car-dependent travel patterns. The site in question is an infill site on zoned and serviced lands in such a location, which is currently underutilised and is surrounded by existing residential development and social and public development. It would not therefore represent a constraint to the delivery of a future N24 upgrade.
- **Government Development Management Guidelines (2007)** – the guidance states that if a proposal would represent a departure from a fundamental provision of a Development Plan or if it would, either alone or in conjunction with others, seriously prejudice and objective of the Plan, then a material contravention would arise. The Guidelines also require that a reason for refusal in circumstances where it is believed that particular objectives would be breached, to clearly state how the objective(s) would be contravened by the proposed development and why that contravention would be contrary to the proper planning and sustainable development of the area. Where the reason includes the term ‘material contravention of the Plan’, it must be clearly shown that specific policies/objectives of the plan would be breached in a significant

way. It is submitted that the P.A. has not clearly shown that the merits of the application have been fully considered and/or that the proposal would clearly or significantly breach the plan objectives.

- **Conflicting objectives in the Development Plan** – the development is clearly supported by the zoning and policy objectives of the Development Plan and as such, the Board can grant permission under Section 37(2)(b) of the Planning and Development Act 2000 (as amended).
- **The Study Area Corridor is remote from site** – it is shown on the Core Strategy Map and the Principles Map as being located c.800m to the north-east of the development site. This is not equivalent to the “Study Area Boundary” for the current N24 Cahir to Limerick Junction Project Concept and Feasibility Study which encompasses the entire route of the project. The P.A. has erroneously considered that the proposed development comes within the current “Study Area Boundary” for the N24 Cahir-Limerick Junction Project and that this therefore constitutes a ‘Material Contravention’ of the Town Development Plan. Both Policy INF 2 and INF 5 refer to a corridor or routes located to the north and north-east of the appeal site as presented in the Specific Objectives Map B of the Tipperary Town and Environs Development Plan 2013-2019. Thus, the proposed scheme does not materially contravene policies INF2 and INF5.
- **Reliance on Study Area Boundary in Concept and Feasibility Study for N24 Project effectively sterilises all land within the corridor** – It is acknowledged that the P.A. in conjunction with LCCC and the TII and the DoT are in the process of developing the N24 Cahir to Limerick Junction Project. It is noted that the first non-statutory public consultation exercise has taken place (27/01/21 to 17/02/21) which presented the Study Area, the Key Constraints and Programme for advancement of the project, and that the project is now at Phase 2 Option Selection. During this phase, feasible alternative options will be examined, and a Preferred Option will be determined. The Study Area Corridor is very large and encompasses whole towns (map reproduced and annotated in

grounds of appeal – Fig. 2.2 page 11). The direction given by TII and MWNRDO, as interpreted by the P.A. effectively sterilises all lands within the study area boundary irrespective of the location of the development

#### **REASON FOR REFUSAL NO. 2 – ABSENCE OF ROAD SAFETY AUDIT**

- **Lack of Road Safety Audit would not give rise to a Precedent** – all planning applications should be considered on their merits. The issue of precedent does not arise and is unlikely to be a factor in the development of other underutilised and fully serviced sites which are appropriately zoned for development.

Notwithstanding this, the grounds of appeal are accompanied by a Stage 1 Road Safety Audit, which identified 6 problems, and associated proposals to mitigate against endangering public safety and obstruction of road users. The developer has accepted the recommendations in respect of each problem. It is suggested that appropriately worded conditions requiring implementation of proposed mitigation measures could be attached to any permission, should the board be minded to grant permission for the proposed development.

- **Problem 1 – Narrow footpath along Dundrum Road** – which could force pedestrians to step onto the carriageway. The developer has agreed to widen the footpath and will comply with DMURS. Revised Drawing submitted.
- **Problem 2 – Forward Visibility for Right Turning Vehicles at direct access point to development on Dundrum Road** – the combination of potentially higher southbound speeds on Dundrum Road due to it being downhill and limited forward visibility could result in right turning development traffic coming into conflict with opposing straight ahead traffic. It was recommended that a raised entry table should be placed across the intersection of Dundrum Road. Accepted by developer, Drawing enclosed.
- **Problem 3 – Public lighting at pedestrian crossing point** at direct access point to development should be provided. Accepted by development and a public lighting plan has been submitted with grounds of appeal. Developer would be happy to accept a condition to implement same.

- **Problem 4 – Pinch point of footpath at southern tie-in on Dundrum Road** – which could force pedestrians onto carriageway. Measures will be investigated in consultation with the P.A. to address this problem as recommended and could be addressed by condition.
- **Problem 5 – the informal pedestrian crossing points should be relocated to mitigate risk** – Accepted by developer and proposed dropped kerbs and tactile paving which could be addressed by condition. Revised drawing submitted with grounds of appeal.
- **Problem 6 - Containment of play area adjoining Dundrum Road** – children at play could stray onto road. Mitigation proposed in form of a wall and railings.

## 6.2. Planning Authority Response

6.2.1 The P.A. has not responded to the grounds of appeal.

## 6.3. Third party Observations on the grounds of appeal

Third party observations on the grounds of appeal have been received from the adjoining owner/occupier to the north-west of the site. The main points raised in the observations may be summarised as follows:

1. **Nature and proximity of row of houses to rear of property** – it is considered that the row of houses to the rear of their property is too close to their site and should be moved back. These dwelling units should also be bungalows rather than 2-storey houses. The nearest gable wall should be at least 20m from the boundary of their property.
2. **Boundary treatment** – the existing rear and side walls which bound the appeal site should be removed and replaced with a 2-metre-high wall capped and dashed on their side for privacy and on any segment visible from the public view.
3. **Drainage along common boundary** – the observers' site boundary lies outside the existing wall and their sewer runs alongside. It is critical that no development takes place on the line of the sewer or that it would be damaged. It is requested that the new boundary wall would be built outside of the sewer

on the applicant's side and that the sewer be connected to the public sewer on Dundrum Road.

4. **Front wall** – it is requested that the developer would construct an extension to the observers' front wall which would connect to the new wall and that this would include piers where the new wall meets the extended wall and on all corners of the new boundary wall.
5. **Tree planting** – it is requested that trees be planted in the gaps within the existing line of trees along the eastern and southern boundaries of the property.

## **7.0 Assessment**

7.1. It is considered that the main issues arising from the appeal are as follows: -

- Does the proposed development constitute a material contravention of the Development Plan?
- Can the Board grant permission in accordance with any of the criteria under Section 37(2)(b) of the Planning and Development Act?
- Is the refusal of development justified on the basis of the lack of a Road Safety Audit for the proposed development?
- Other matters

### **7.2. Does the proposed development constitute a material contravention of the Development Plan? (5.12 and 7.15)**

- 7.2.1. The Development Management Guidelines (DoEHLG 2007) emphasise the importance of the development plan in the planning process. It is stated that in deciding whether a development proposal would materially contravene the plan, it is necessary to consider whether there would be a departure from a fundamental provision of the plan or whether the development, alone or in conjunction with others, would seriously prejudice an objective of the plan. If this is found to be the case, there is a statutory prohibition on granting permission. However, it is of critical importance that the reasons for the contravention are fully explained.

- 7.2.2. The Tipperary Town and Environs Development Plan 2013 (as extended) and the Tipperary South County Development Plan (as varied, 2017) both emphasise the critical importance of providing high quality connectivity between town and cities in the region in order to attract inward investment, to improve regional integration and the effective movement of people, goods and services between the regions. In this regard, the link corridor between Limerick and Waterford (via the N24) is highlighted as being of strategic importance and this is also reflected in the recently published Regional Spatial and Economic Strategy for the Southern Region
- 7.2.3. The Tipperary County Development Plan (9.1.3) identifies the key priority for road infrastructural improvement to support regional growth as the N24 Waterford to Limerick dual carriageway. It is stated that the TII is responsible for the delivery of national road improvements through the Capital Investment Programme.

**Policy T12** – seeks the implementation of Strategic Improvement Priorities identified in the SERPGs and the MWRPGs and any strategic transportation documents for the region. The Council will seek to support the implementation of these schemes by the reserving of corridors of the proposed routes free from inappropriate development, so as not to compromise the future road schemes.

- 7.2.4. The Tipperary Town and Environs Plan (2013) in its Strategic Vision (Chapter 2) singles out the Realignment of the N24 as “the major issue facing the town”, as the means of addressing the problems arising from the route of the N24 passing through the town (2.2.4). These issues are stated to include congestion, health and safety, aesthetic and economic problems. The Plan assigns such importance to addressing these issues that it identifies the need for an interim measure in the form of an Inner Relief Route to reduce traffic congestion within the town, in the event that funding for the N24 Realignment project (which is outside of its control) is deferred. The Inner Relief Route, which passes close to the site of the proposed development, is included in the Delivery of the Strategic Vision (2.3) and in the ‘Principles Map’.
- 7.2.5. These issues, aims and objectives are repeated in Chapter 5 – Infrastructure, where it is very clear that the resolution of the problems associated with the through traffic on the N24 are central to the Land Use and Transport Planning issues in the Development Plan. At 5.1.2 it is stated that

“The delivery of the N24 Bypass is now likely to be medium term and is dependent on the required funding being allocated. In order to address the congestion issues associated with the town it is proposed that a number of measures be provided for in the Plan to be progressed as and when funding becomes available. These measures are also identified on the Principles Map (page 17) and the Public Realm and Transportation Map (page 22).

- 7.2.6. The Principles Map also includes a Reservation corridor for the N24 realignment with an annotation that “no funding identified so delivery will be medium/long term. New route will remove traffic congestion from town centre”. It is then stated, inter alia, that in support of NRA (now TII) Policy, the Council will ensure that the reservation corridor of the N24 Realignment, which is currently at redesign stage, is retained free from development.

**Policy INF 2: Protection of Reservation Corridor for the Re-alignment of the N24** - It is the policy of the Council to ensure that the reservation corridor for the Proposed By-Pass of Tipperary Town remains free from development and the Planning Authority will support NRA road development proposals.

- 7.2.7. The Town Development Plan also included provisions for the relief of congestion associated with the N24 route through the town centre by means of a combination of measures that would be under the local authority’s control. This included the Northern Relief Road and the Radial Interconnector Route, for which indicative reservation corridors were identified (Map B), but it was emphasised that these corridors were indicative only due to the need for various surveys and public consultation to be carried out. These corridors were the subject of the following policy objective:

**Policy INF 5: Protection of Reservation Corridors** – it is the policy of the Council to ensure that the reservation corridor for the Proposed Radial Interconnector Route and the Northern Inner Relief Route remains free from development.

- 7.2.8. It is clear from the foregoing that the delivery of a town bypass in the form of a Realignment of the N24 is of paramount importance to the future of the town and forms a critical grounding objective of the Tipperary Town Development Plan. It is equally clear that when the Plan was being drawn up, the planning authority was

aware that as the project involves an upgrade of a National Road, there was considerable uncertainty regarding the timing and funding of the project. Given the critical importance of the resolution of the environmental problems arising from the through route, the P.A. included contingency plans in the form of radial and inner relief roads. It is considered that these factors are evident in the wording of the two relevant policies INF 2 and INF 5. It is stated that the reservation corridors (for the N24, the Radial and Inner Relief Routes, respectively) will be kept free from development, but the policies are not tied specifically to the routes shown on the Principles Map or Map B, which are clearly shown as 'indicative'. Furthermore, in the case of INF 2, the policy states that the planning authority will support NRA road proposals and the text acknowledges that the N24 project was at redesign stage in 2013.

- 7.2.9. In the meantime, the stretch of the N24 from Limerick Junction to Cahir (which currently passes through Tipperary Town), has become the subject of an "Active List Project" and is at present being progressed by the TII, the DoT, Tipperary County Council and Limerick City & County Council. The Project was at 'Concept and Feasibility Stage' earlier this year and was the subject of an initial public consultation exercise. Since then, a number of options have evolved and the proposed options were subject to public consultation between 25<sup>th</sup> June 2021 and the 6<sup>th</sup> of August 2021, according to the TII website. The TII Capital Expenditure Programme on the website lists the N24 Cahir-Limerick Junction Road improvement project as a Major National Road Project, which is currently at Phase 2 'Options Selection'. During this phase, feasible alternatives and options to address the transport problems identified in Phase 1 will be examined in more detail and a systematic assessment of these will be carried out. A 'preferred transport solution' will then form the basis of a detailed design using a multi-criteria analysis. A public display of the Preferred Solution is expected to take place in Q1 of 2022.
- 7.2.10. The 'interactive maps' part of the website indicate that the alternatives and options under consideration include four main route options together with two additional link roads to the east of Tipperary Town (coloured brown). I have attached copies of these maps for the Board's information. These proposed link road alternatives seem to generally follow a similar line to the routes reserved for the Northern Inner Relief Route and the Radial Interconnector Route, respectively. Proposed Link Road 1

traverses the site of the appeal. It occupies at least a third of the northern section of the site and also includes part of the vacant sites to the north and east. It would provide a link between Dundrum Road and Cashel Road, wrapping around the northern and eastern side of the cemetery.

- 7.2.11. In conclusion, it is considered that the proposed development would be premature pending the determination of the final road layout for this important road project for the area. The Tipperary Town and Environs Development Plan makes it clear that the upgrade of the N24 and the resolution of the environmental problems associated with the route passing through the town is a critical project for the future of the town and the P.A. has sought to reserve the necessary lands to achieve this objective. The proposed development would, therefore, represent a departure from a fundamental provision of the development plan, and would seriously prejudice objectives INF 2 and INF 5 of the Plan. The subject matter of these objectives has been reflected in the updated County Development Plan (2017) and in the Regional Planning Guidelines for the Southern Region (RSES 2020). As such, it is considered that the proposed development would materially contravene the provisions of the development plan.

### **7.3. Material contravention and Section 37(2)(b) of the Planning and Development Act 2000 (as amended)**

- 7.3.1. Where a planning authority has decided to refuse permission because a proposed development materially contravenes the development plan, the Board may only grant permission where it considers that one of the following circumstances applies:
- i. The proposed development is of strategic or national importance
  - ii. There are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned or
  - iii. Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of Government, or

- iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

**(i) Is the development of strategic or national importance?**

- 7.3.2. The proposed development is for a housing development of up to 84 housing units with a creche. Although the policy framework comprising the hierarchy of plans from the National Planning Framework, the Regional Planning Guidelines and Sustainable Housing Guidelines and the County and Town Development Plans strongly support and encourage the development of serviced and residentially zoned sites within built-up areas, such as this one, for residential development, the proposed development could not be described as one of strategic or national importance.

**(ii) Are the objectives in the Development Plan conflicting or are they not clearly stated in respect of the proposed development?**

- 7.3.3. The Tipperary Town and Environs Development Plan (2013) makes it very clear from the outset that the most critical matter facing the town is to resolve the issues relating to the through traffic on the N24. At the time that the Plan was being drawn up, the route options for the realignment were at a very early stage. This project has been progressed significantly in recent times and is now part of the TII Active List of Major Road Projects. The Development Plan would have ordinarily been revised and replaced with a new Development Plan at the end of the 6-year period, but as Tipperary North and South County Councils have merged in the meantime, the current plans have been extended until a new set of plans are adopted.
- 7.3.4. As the route of the road realignment and the associated link roads have not yet been determined, it is considered reasonable that the road reservations would take precedence over the other objectives in the plan until such time as the final route is finalised. The proposed development is considered to be premature until such time as the road layout is finalised, which is the subject of an active process at present. Thereafter, should the site no longer be required for the purposes of the road project, the residential zoning will continue to apply unless the site is rezoned in any future development plan. It is considered, therefore, that the objectives in respect of this site are not conflicting.

**(iii) Should the proposed development be granted having regard to the regional planning guidelines or Ministerial guidelines etc?**

- 7.3.5. The recently published Regional Spatial and Economic Strategy for the Southern Region (2020), which is informed by the National Planning Framework restates the importance of the upgrading of the N24 between Limerick and Waterford. It is considered that the proposed development would be premature pending the final determination of this route. I do not consider that the proposed development should be granted on these grounds.

**(iv) Should the proposed development be granted having regard to the pattern of development/permission granted in the area since the development plan was adopted?**

- 7.3.6. I am not aware of any changes in circumstance in terms of the pattern of development or grant of planning permissions in the area since the adoption of the Development Plan, which would be material to the current proposal. It is noted that a current planning application to the immediate north of the site (Reg. Ref. 20/1383) is subject to a further information request which included the issue of conflict with the road reservation. I do not consider that the proposed development should be granted on these grounds.
- 7.3.7. In conclusion, it is considered that the proposed development constitutes a material contravention of the Tipperary Town and Environs Development Plan (2013, as extended), which formed the basis of a reason for refusal by the planning authority, and that there are no circumstances, as outlined in Section 37(2)(b), which would allow the Board to grant permission in this instance.

**7.4. Road Safety Audit**

- 7.4.1. The second reason for refusal was based on the absence of a Road Safety Audit, which is a requirement of Policy DM1 of the Development Plan for such development proposals, and the failure to provide one was considered to create a precedent for similar development, as well as creating a traffic hazard and obstruction of road users by reason of the endangerment of public safety. I would agree that the failure to provide a road safety audit would be contrary to Policy DM1 and as such, would create difficulties in respect of other developments in the area, should the planning

authority's approach seem inconsistent. However, this is considered to be immaterial now as the developer has carried out a Stage 1 RSA which was submitted with the grounds of appeal.

- 7.4.2. The RSA has identified 6 problems relating to the proposed development, for which mitigation measures have been suggested. The developer has generally accepted the recommendations and has submitted revised drawings which include most of these mitigation measures. The problems and solutions proposed are summarised in the grounds of appeal above at section 6.0.
- 7.4.3. It is proposed to widen the footpath along Dundrum Road (Problem 1) and to investigate measures to resolve the pinch point on the same footpath at the tie-in with the development at the south-western corner of the site (Problem 4). The widening of the footpath would be achievable by removing the existing low wall and this would mean that pedestrians would not be forced onto the carriageway. However, there are several pinch points along the footpath, including to the north of the site and at the tie-in to the south, which are outside of the applicant's control. The appellant has suggested that an appropriately worded condition requiring the applicant to work with the planning authority to resolve these issues would address these matters. I would agree that this seems reasonable.
- 7.4.4. The road safety measures included in the proposed drawings also involve the provision of a raised table junction with ramps at the entrance to the site and the relocation of informal pedestrian crossings within the development. The raised table junction is intended to address the hazard for right turning vehicles and opposing traffic due to the poor forward visibility at this location (Problem 2). The revised location for the informal crossing points (Problem 5) and the proposed public lighting plan which will include lights at crossing points (Problem 3) are considered to be reasonable.
- 7.4.5. The RSA (Problem 6) had identified the need for containment of the children's play area adjoining the creche, which would be addressed by means of a new wall and railings. This would be likely to address the specific problem of balls being retrieved from the road etc. However, it is considered that the location of the play area directly adjacent to the public road is less than ideal and would be better located facing into the housing development. However, I do not consider this to be a fundamental issue.

- 7.4.6. In conclusion, it is considered that the RSA has identified several road safety problems associated with the proposed development and recommended solutions which the developer is agreeable to implementing. As such, the second reason for refusal is no longer of any relevance.

## **7.5. Other matters**

### **7.5.1. Layout of development and public open space provision**

- 7.5.2. The proposed layout of the development, as revised, results in the majority of the public open space being concentrated in one large space which is centrally located. This has the advantage of being close to the majority of the proposed houses and being overlooked. However, the road layout means that the proposed open space is encircled by roads with rows of parking spaces within driveways opening onto these roads and further visitor parking spaces and the hammer head set into the edges of the green space. This results in a very car dominated environment which would pose safety risk for children using the green space. The remainder of the public open space is located directly adjacent to the Dundrum Road frontage. Although it is proposed to contain the spaces with walls and railings which would mitigate the road presence somewhat, the accessibility and functionality of these spaces is questionable. Furthermore, the design and layout miss the opportunity to create a sense of place along the street by giving definition to the streetscape. Should the Board be minded to grant permission, it is considered that applicant should be requested to provide a revised layout to address these matters.
- 7.5.3. The third-party observers have raised several issues relating to the layout of the proposed development. In particular, it was requested that the row of houses behind (to east of) their rear boundary should be a minimum of 20m distant, and these houses should be required to be bungalows. It is noted that the nearest gable wall is c.13m from the observer's rear boundary wall and is c.26m from the rear wall of their property. It is considered that these distances are unlikely to result in any loss of amenity to the observer's property and that there would be no justification for requiring revisions to either the design/height of the proposed dwelling or the separation distance.

#### **7.5.4. Boundary treatments**

- 7.5.5. The revised drawing 1901\_04\_02P2, submitted with the grounds of appeal (25/05/21) provides a comprehensive schedule of proposed boundary treatments. The internal screen walls/fences largely consist of concrete post and timber fences and where possible, existing boundary walls and vegetation is to be retained. However, part of the boundary with the cemetery (to the south-east) is to be replaced with a retaining block wall and embankment. The existing boundary wall with the observer's property is to be retained. The proposed boundary treatments seem reasonable subject to details.
- 7.5.6. The observers pointed out that the existing boundary wall lies within the boundaries of their site with a sewer running alongside the exterior of the wall. It was requested that the wall be replaced with a 2-metre-high wall which would be capped and dashed on their side, that it be constructed on the outside of their sewer line and that the construction works would not damage the said sewer, which should be connected to the public sewer. It was further requested that the applicant be required to connect their front wall to the proposed new wall, together with associated piers, and that trees be planted in any gaps along the boundary.
- 7.5.7. As stated previously, it is considered that the design, layout and separation distances involved would not give rise to any significant loss of amenity to the neighbouring property adjoining the north-western boundary of the site. There is no justification, therefore, to require the applicant to revised the boundary treatment. It is considered that the matters raised, as outlined above, are civil matters to be resolved between the parties, having regard to section 34(13) of the Planning and Development Act 2000 (as amended).

#### **7.6. Environmental Impact Assessment**

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

## 7.7. Appropriate Assessment

The following European sites are located within 15km of the site.

Lower River Suir SAC (002137) – lies within 10km.

Moanour Mountain SAC (000646) – lies within 10km.

Galtee Mountains SAC (001058) – lies within 10km.

Philipstown Marsh SAC (001847) – lies within 10km.

Lower River Shannon SAC (002165) – lies within 15 km.

Given the distances involved, that the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## 8.0 Recommendation

- 8.1 I recommend that planning permission should be **refused** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The site is located within the study corridor for the N24 Cahir to Limerick Junction Road Project, the protection of which is an objective of the Tipperary Town and Environs Development Plan 2013 (as extended), of the Tipperary County Development Plan 2009 (as varied) and of the Regional Spatial and Economic Strategy for the Southern Region 2020, within which the road project is considered to be infrastructure of strategic significance to both Tipperary Town and to the Southern Region. It is the policy of the planning authority, as set out in T12 of the County Development Plan, to seek to implement the Strategic Transport Priorities identified in the Regional Planning Guidelines by reserving such corridors free from development that might compromise future road schemes. Policies INF2 and INF 5 of the Town Development Plan, respectively, seek to protect the reservation corridors for the N24 by-pass of Tipperary Town, for the Northern Inner Relief Route and Radial Interconnector

Route free from inappropriate development and to support NRA (now TII) road development proposals. The N24 Cahir to Limerick Junction Project forms part of the TII's current Active Major Roads Project List (2020) which is at Phase 2: Option Selection stage, wherein the site of the proposed development is located within an area currently under consideration as a route option. The Board considers that the proposed development would materially contravene the objectives for the protection of the reservation corridors as set out in the plan. The Board, pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000 (as amended) is precluded from granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site of the proposed development within a route option corridor which is currently under consideration as part of the N24 Cahir to Limerick Junction National Road improvement project, and the preservation of which is an objective of both the Tipperary Town and Environs Development Plan (2013, as extended) and the Tipperary County Development Plan (2009, as varied), by reason of the nature and scale of the proposed development, would be premature development pending the determination of the preferred alignment of this road project and would be contrary to the proper planning and sustainable development of the area.

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Mary Kennelly  
Senior Planning Inspector

23<sup>rd</sup> August 2021