



An
Bord
Pleanála

Inspector's Report

ABP-310394-21

Development	Demolition of derelict house, formation of vehicular and pedestrian access, construction of 60 houses, estate road, footpaths, boundary walls, services and associated site works.
Location	Shinnagh , Rathmore, Co Kerry,
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20849
Applicant(s)	Old Road Partnership.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant(s)	Joe and Lucy O Keeffe.
Observer(s)	None.
Date of Site Inspection	13 th August 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a substantial site 2.98 hectares located within the town of Rathmore (Shinnagh), in Co Kerry. Rathmore is circa 20km east of Killarney on the N72 immediately west of the border with County Cork and is also on the rail route between Tralee and Dublin. Rathmore has an unusual development pattern as the town developed in two geographically separate parts comprising the eastern settlement or Rathmore (Shinnagh) and Rathmore (Church Place) to the west. The two settlements are separated by a distance of just under 2 km. Employment and retail uses are largely located in Rathmore (Shinnagh) while most of the social and community services are located in Rathmore (Church Place). The 2016 Census recorded a population of 790 for Rathmore East (Shinnagh) and 162 for Rathmore West (Church Place).
- 1.2. The appeal site is located south of main Street N72 and to the north of Old Road with Mill Road (Bog Road) to the west. The site lies circa 250m south of Rathmore Railway Station. The site frontage to main street is at the north-western extremity of the site. The immediate context on Main Street is characterised by mixed uses. There is a vacant public house *The Star Bar* to the east and a petrol forecourt and retail unit to the west. The appeal site frontage to Main Street is occupied by an existing two storey dwelling house set back behind a front boundary wall with overgrown grassed front garden and a number of dilapidated outbuildings to the rear. The existing structure has been on the derelict sites register since 2008 and comprises a two-storey dwelling constructed circa 1900. The structure has a combination of brick and rubble walls with a natural slate finish to the roof. The dwelling is visually in a poor state of repair with boarded up windows and missing roof slates.
- 1.3. To the rear of the dwelling the appeal site extends along a west to east axis to the backlands of Main Street before elongating southwards to incorporate greenfield agricultural lands from a number of different field patterns. The fields include a number of open drainage ditches along field boundaries defined largely by sod and stone hedgerows.

2.0 Proposed Development

2.1 The application involves permission to demolish the existing derelict dwelling house, form a vehicular and pedestrian access and construct 60 dwelling houses, provide estate road, footpaths boundary walls, services and all associated site works. The dwelling to be demolished makes way for the provision of an entrance junction and access road. The proposed dwellings are laid out along the estate road.

2.2 Modifications were made to the proposed layout and configuration during the course of the application in response to the Council's request for additional information. The number of dwellings remained at 60 made up of the following house types:

6 no one bed single storey dwellings

9 no two bed single storey dwellings

27 no three bed 2 storey terraced dwellings

12 no three bed 2 storey semi-detached dwellings

6 no four-bed detached two storey dwellings

The proposal is presented as the first phase (phase A) of a five-phase masterplan for the development of the adjoining lands comprising an overall site of approximately 10.84hectares (26.6 acres). Application documentation submitted suggests that the provisional masterplan schedule would include residential development (120 units) , a nursing home (60-70 beds), Mixed Use office, commercial, retail, café (approximately 20 units 2,000sq.m in total), Discount Retail Foodstore (approximately 2,000sq.m GFA.)

3.0 Planning Authority Decision

3.1. Decision

As the proposal represents a material contravention of the Kerry County Development Plan 2015-2021 and the Killarney Municipal District Local Area Plan 2018-2024 therefore Kerry County Council invoked the procedures prescribed in S34(6) of the Planning and Development Act 2000. By order dated 6th May 2021,

Kerry County Council issued notification of the decision to grant permission for the development pursuant to the resolution of the Council passed at the Killarney Municipal District Meeting of 5th May 2021 under Section 34 of the Planning and Development Act 2000 as amended. The permission was subject to 24 conditions which included the following of particular note.

- Condition 2. Cash Deposit Bond to secure the provision and satisfactory completion and maintenance of the development until taken in charge, €560,000
- Condition 3. Certification in respect of watermains foul and surface water drainage,
- Condition 4. Development Contribution €96.120 in accordance with the development contribution scheme.
- Condition 5. Special Contribution €77,540 towards the cost of roads infrastructure adjacent to the development and public lighting and undergrounding of ESB networks.
- Condition 6. Part V.
- Condition 9. Archaeological Monitoring of Ground disturbance.
- Condition 12. All recommendations of Stage 1 / 2 road safety audit to be implemented. Stage 3 safety audit to be carried out.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's initial report considers the proposal to be welcome in principle noting that it is the first substantial housing development applied for in Rathmore for a number of years and may help to rejuvenate the village. A number of items of further information were requested including *inter alia*.

- Revision to layout to address improve open space and eliminate linear nature of roadways and building line.
- Cross section to show sites 57-60 relative to existing properties to the north.

- Clarify purpose of dead space between sites 10-11 28-29.
- Comprehensive Landscaping Scheme also to provide for retention of existing trees.
- Archaeological Assessment.
- Part V proposals.
- Structural Engineers report of building to be demolished.
- Details of pre-connection enquiry with Irish Water.
- Drawings showing accepted recommendations of road safety audit. Proposals in respect of problem 3.6 with respect to speeding arising from long straight access road to be clarified.
- Lighting details.
- Refuse facilities for terraced units.
- Disabled parking provision. Design details of parking spaces.
- Details of storm water design.

3.2.1.2 A subsequent report recommended the issuing of request for clarification of further information seeking details of public lighting, proposals to protect stormwater from sand and silt in subsequent development phases. In relation to the section through site clarification regarding boundary wall backing onto Main Street properties.

3.2.1.3 Senior Executive Engineer's report recommended that the material contravention process be instigated in order for permission to be granted. It was outlined that a material contravention was required as the proposed development would materially contravene Specific Objective KY-RES-01 of the Killarney Municipal District Local Area Plan 2018-2024. to "Facilitate the development of residential units within each settlement boundary in accordance with the Core Strategy."

3.2.1.4 Planner's report to Council notes that towns such as Rathmore have suffered over the years from de-population due to the development of houses at the edge of town/ village or one-off houses in the open countryside. This is the first substantial housing development in Rathmore for a number of years. It is at the centre of the village and will help rejuvenate the village. The proposed development is a well-considered

proposal to provide 60 dwellings close to Rathmore Town Centre. The density and layout is appropriate to the location and consistent with the existing pattern of development in the vicinity. Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

3.2.2.1 County Archaeologist's report notes that there are no recorded monuments listed in the record of monuments and places in proximity to the development, however given the scale of the proposal an archaeological assessment should be requested. The assessment should include pre-development archaeological testing of the entire masterplan site.

Second report notes concurs with recommendation for full archaeological excavation of two levelled mounds under license and archaeological monitoring of all ground disturbance. ¹

3.2.2.2 Housing Estates Unit - sets out general requirements.

3.2.2.3 Biodiversity Officer. Site is not considered ecologically sensitive – It consists of semi-improved grassland with extant hedgerows. Existing structures unlikely to be suitable habitat for bat species. Based on the distance to the River Blackwater (Cork/Waterford) SAC and intervening urban fabric and lack of direct connection to the SAC or other sensitive ecological receptors that could act as a source pathway no potential for significant effect on the Blackwater River SAC arises. In the event of permission consideration to landscaping with Irish Species and Provenance with recommendations from the All-Ireland Pollinator Plan, Pollinator Friendly Planning Code Guidelines. Seed mix for grassed green spaces should be pollinator friendly. Mature hedgerows to be maintained where possible.

3.2.2.4 Transport Roads & Marine Department Clarification regarding public lighting and proposals to protect stormwater system from ingress of material, sand and silt from other phases. Final report recommends conditions including a special contribution to €77,540. (Comprising €42,700 100% contribution in respect of the cost of resurfacing the vehicular entrance and public footpath into the development. €14,840 100% towards upgrading and provision of 3 public lights and €20,000 - 50% contribution

¹ I note that the two levelled mounds are not within the redline boundary of the appeal site.

towards improvements to the undergrounding of ESB Networks which serves this development.

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland TII submission notes reliance on the planning authority to abide by official policy in relation to development on/affecting national roads. Proposed new entrance has been subject to a Road Safety Audit and all recommendations arising should be incorporated. In particular sight distance to be provided to allay concerns expressed at Section 3.3.

3.3.2 Irish Water Submission. – No objection subject to connection agreement subject to constraints of Irish Water Capital Programme and in accordance with Irish Water Standards and Code of Practice.

3.4. Third Party Observations

3.4.1 There were a number of third-party submissions from the following

- Betty Lenihan, Main Street.
- Jessica Fox & Michael O Sullivan Jr. The Square Rathmore.
- Michael Mary & Paul O Sullivan. The Square.
- Imelda Cronin & Others, Old Road Shinnagh
- Donal and Kathleen Kelliher, West End Rathmore.
- Terence F Casey and Company Solicitors on behalf of Joe and Lucy O Keefe Rathmore.

3.4.2 The submissions raise common and particular concerns which in the interest of brevity I have summarised as follows:

- Overlooking and loss of privacy.
- Height of boundary wall to established properties on main street should be sufficient to maintain privacy.
- Negative impact on residential amenity particularly plots 57-60 inclusive which result in invasion of privacy, overlooking, light noise and disturbance.

- Right of way to rear of Cahill's bar of concern.
- Excessive density and scale.
- No adequate essential amenities to support a development of this size. No GP, school at capacity, limited hours in garda station.
- Traffic safety - Shinnagh Cross accident blackspot. Limited visibility at Mill Cross
- Concerns regarding drainage and water environment. Capacity of culvert at bungalow to the north. Flood risk.
- Impact on sunlight, daylight, noise and overlooking issues.
- Impact on the established town centre.
- Suburban type development. Inappropriate density and scale.
- Potential for mixed use ignored.
- Proposed development of 60 houses, with a further intention in excess of 100 units. Contravenes Sustainable Residential Development in Urban Areas Guidelines. No one proposal for residential development should increase the housing stock by more than 10-15% within the lifetime of the development plan.
- Rural character of Old Road.
- Detrimental impact on village through incompatible and gross overprovision of suburban housing in a rural village setting.
- Services incapable of catering for the current and future development proposals on this landholding.
- Proposal is premature pending the adoption of an up-to-date plan for the village.
- Question the material contravention process.

4.0 Planning History

PL08.241419 08/972 Application for permission for demolition of 2 no. existing habitable houses and 5 no. agricultural sheds and construct 315 residential units and 1 no. two storey commercial unit and all associated site works. Following third party appeal the decision of Kerry County Council to grant permission was overturned and permission refused by An Bord Pleanála on 15/5/2009 for the following reasons.

“In the Kerry County Development Plan, 2009-2015, Rathmore is designated a local service centre, where it is policy that such centres retain their existing character and develop as attractive settlements. It is considered that the scale of the proposed development, 315 houses, which would more than double Rathmore’s existing population, is excessive and would overwhelm the character of the settlement. Furthermore, the proposed development would be contrary to the ‘Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities’ published by the Department of the Environment, Heritage and Local Government in 2008 where for smaller towns and villages “The scale of new residential schemes for development should be in proportion to the pattern and grain of existing urban development...” and where advocating “phased development of a variety of sites over time.” Therefore, the proposed residential development would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the layout of the proposed development would contravene the provisions of the 2007 Rathmore Local Area Plan for part of these lands, in particular the ‘Town Centre’ land use zoning objective and the provisions relating to ‘Opportunity Site 3 – Town Centre Expansion Site’ and the provisions under Section 5.4 ‘Urban Design’ that ‘sites within and adjacent to the urban core extend the urban character of the town centre’. It is considered that the proposed residential development by reason of its layout, scale and extent fails to integrate with the existing town centre and would therefore be contrary to the proper planning and sustainable development of the area

3. The size of the site, some 10.84 hectares, comes within the scope of a mandatory Environmental Impact Statement, being in excess of ten hectares in a built-up area.

In these circumstances, the absence of an EIS would render a grant of planning permission inappropriate.”

5.0 Policy Context

5.1 National Policy

Project Ireland 2040 - National Planning Framework The NPF includes a Chapter, No. 6 entitled ‘People, Homes and Communities’. It sets out that place is intrinsic to achieving good quality of life. National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.

National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

National Planning Objective 13 also provides that “In urban areas, planning and related standards, including in particular height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated

outcomes, provided public safety is not compromised and the environment is suitably protected”.

5.2 Section 28 Ministerial Guidelines

5.2.1 The following Section 28 Ministerial Guidelines are of relevance to the proposed development.

‘Urban Development and Building Heights’ Guidelines for Planning Authorities

‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’)

‘Design Manual for Urban Roads and Streets’ (DMURS) • ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’)

5.3 Development Plan

5.3.1 The Kerry County Development Plan 2015-2021 and Killarney Municipal District Local Area Plan 2018-2024 refer.

5.3.2 Within the County Development Plan Rathmore is designated as a District Town. The function is to serve rural hinterland as service centre and market towns.

5.3.3 The Core Strategy Objective CS-8 is to “*Facilitate sustainable development in the towns and villages in the County, of a nature that supports their defined role at County and Regional level, at a scale appropriate to the availability of supporting infrastructure.*”

5.3.4 Within the Killarney Municipal District Local Area Plan, the vision for Rathmore is to create an attractive, vibrant district town for existing and future incoming residents and to expand on the provision of social and community facilities. The strategy envisages that in order to create a compact settlement pattern and vibrant retail centre the majority of new development will be in Rathmore (Shinnagh). The centre has a strong urban structure and the critical mass to generate growth.

“It is recommended that all developments are in compliance with the DoEHLG guidelines on Sustainable Residential Development in Urban Areas 2009. New developments shall recognise the need to allow for the consolidation of the village and development of a sense of place. It is recommended that all new individual housing schemes should be of an appropriate scale and density to the established pattern of development in the settlement and should not dominate. Development must integrate with the landscape and provide a good range of house types. An increase in density may be considered subject to design, layout and location. Subject to the provision of water and wastewater treatment infrastructure it is considered that should infrastructural constraints be overcome, the housing requirement of 28 units as per the core strategy will be facilitated over the lifetime of the plan.

The period of this plan is for six years only. However, where capacity exists in infrastructure and where considerable expenditure on capital infrastructure projects has been made, it is preferable that adequate suitably located lands are zoned in the interests of proper planning and longer-term sustainable development of the settlement. A strategic land reserve (R4) has been provided to cater for the long-term development of the village.

In compliance with the DoEHLG guidelines on Sustainable Residential Development in Urban Areas and recognising the need to allow for the consolidation of the village and development of a sense of place, proposals for residential development adjacent to the village core will be prioritised. It is considered that any new individual housing scheme must be of an appropriate scale and density to facilitate integration with the character of the surrounding landscape.”

- 5.3.5 The part of the site occupied by the existing derelict dwelling and a section of the north-eastern part of the site in the backlands of the Main street are zoned Town Centre M2 while the remainder of the site is zoned O1 Strategic Reserve. The zoning category O1, Strategic reserve, White land - is to cater for those cases where land is zoned for development at some time in the future but no objectives or specific controls are indicated at present.

KY-Res-01 To facilitate the development of residential units within each settlement boundary in accordance with the Core Strategy.

KY-Res-03 To prohibit development on lands zoned as strategic residential reserve (R4) until 80% of all other residential zoned lands have been developed to the satisfaction of the Planning Authority.

KY-Res-04 Ensure that new development schemes shall contribute towards the consolidation of the settlement and development of a sense of place. Development should make effective use of infill, brownfield and backland sites while preventing unnecessary ribbon development.

KY-Res-05 Require all new residential development schemes (over 5 units) to provide for a mix of house types in order to meet and adapt to the changing demographic trends and household profiles in the County.

KY-Res-07 Ensure that residential densities reflect the density of appropriate adjoining developments. Higher densities will be considered in the town/village centre or within close proximity to the town/village centre. Lower densities will be considered at the edge of the settlement as per the Department of Environment, Heritage and Local Government publication, guidelines for Planning Authorities on 'Sustainable Residential Development in Urban Areas' 2009.

KY-Res-08 Facilitate the preparation of masterplans for key settlements and identified strategic residential reserve landbanks to ensure future development integrates in a coherent and sustainable manner. Existing and potential access should be preserved to ensure ease of movement particularly for pedestrians and cyclists.

5.4 Natural Heritage Designations

The site is not within a designated area. The nearest such site is the Blackwater River (Cork Waterford) SAC which occurs within 130m to the north of the site.

The Killarney National Park McGillicuddy's Reeks and Caragh River Catchment SAC occurs within 4.5km

5.5 EIA Screening

- 5.5.1 An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2 Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.5.3 It is proposed to construct a residential development of 60 dwellinghouses. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 2.98ha and is located within the existing built-up area but not the business district. The site area is therefore well below the applicable threshold of 10 hectares. I note however that the overall masterplan lands extend to some 10.84ha which would trigger the need for EIA.
- 5.5.4 The appeal site is partly brownfield and partly greenfield lands extending to the backlands of the main street of Rathmore. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site as discussed below and there is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site/or other). 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 proposed development would use the public water and drainage services of Irish Water and Kerry County Council, upon which its effects would be marginal.
- 5.5.5 Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- and the results of the strategic environmental assessment of the Kerry County Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- 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), and
- 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 for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is submitted by Terence F Casey and Company, on behalf of Joe and Lucy O Keeffe, Shinnagh Rathmore. Grounds of appeal are summarised as follows:

- Inappropriate Suburban type, scale and density of housing inappropriate in village centre location.

- Proposal undermines the proper implementation of the Development Plan.
- Proposal in conjunction with that on the adjoining lands will eventually lead to the development of over 200 units. Piecemeal approach on part of land is an attempt to circumvent the Strategic Housing Development Process as set out in the Act.
- Proposal at variance with zoning objectives of the Local Area Plan.
- Proposal ignores the possibility and need for mixed use in the area.
- Sustainable Residential Development in Urban Areas - Guidelines states at Section 6.3(e) Scale of development in proportion to the pattern and grain of existing urban development and provision that “where advocating phased development of a variety of sites over time no one proposal for residential development should increase the existing housing stock by more than 10-15% within the lifetime of the development plan or local area plan.
- Proposal is linear in style with no character areas or sufficient variation in accommodation type.
- Application is premature.
- No facilities such as creche, overlooked open space / playgrounds. Green areas too remote from majority of dwellings.
- Biodiversity and flora and fauna of the area not addressed.
- AA, EIA and NIS not submitted.
- Several streams within the site connect to the Owenacree River which eventually flows into the Flesk River Part of Killarney National Park SAC.
- Horseshoe bats known to occupy buildings in the vicinity. Badgers regularly frequent lands. Curlew and other birds.
- Proposed development inappropriate in terms of design, scale, landuse, character and layout.
- Incompatible gross overprovision of suburban housing in a rural village setting.
- Substandard design contrary to the proper planning and sustainable development of the area.

6.2 Applicant Response

6.2.1 The response submitted by Leahy Planning Limited on behalf of the first party is summarised as follows:

- Matters raised in the appeal are contradictory. Claims regarding suburban design yet density also considered too high. Development piecemeal yet excessive.
- Refute claim of suburban character - 38 of the 60 houses are contained in terraces of mainly 4 houses with 6 of them in blocks of 3 houses. Sense of streetscape is created as is evident from contiguous elevation in drawing no 226.
- Design is very much informed by DMURS. Pedestrian priority and pedestrian safety significant elements in the design process.
- Allegation that the proposal is piecemeal or seeks to circumvent the SHD process as set out in the Act is rejected.
- Zoning is M2 Town Centre and OS2 Strategic Reserve. Residential development is indicated as being “open for consideration”.
- Core Strategy of the Kerry County Council indicates an allocation of 28 houses for Rathmore. Material contravention provided in the Act where the planning authority considers that a particular proposal is in the interest of proper planning and sustainable development.
- Zoning approach has been overtaken by recent events. Possibilities of remote working and rationalisation of the retail sector means that typical commercial mixed uses traditionally located in a town or village centre are no longer commercially viable.
- Points of access for wider development demonstrated.
- Development is well below the threshold for Environment Impact statement.
- There are no European designated sites that are directly connected to the site. No requirement for AA screening report or NIS.
- NPWS have not indicated any nearby bat roosts. Biodiversity Officer notes that the existing structure not likely to be a suitable habitat for bat species. No evidence of badgers.

- Material Contravention was supported by the planning authority as outlined in planner's report and Councillors voted unanimously to permit the material contravention.
- Significant excess capacity in regard to foul sewage provision within the village and the railway station located in close proximity.
- Rathmore has a uniquely low level of unemployment at 5.6% largely due to the proximity of a variety of local industrial facilities in addition to significant seasonal tourism employment.
- Strong planning case for development in light of the housing crisis and the only impediment is the core strategy and arbitrary figure for the number of houses allowed in Rathmore. As is clear from LAP the figure is derived from an assessment of the rather sluggish population growth which has taken place in Rathmore in the last 10 years and takes no account of infrastructure capacity, employment opportunities and public transport.
- Material contravention process exists to enable elected representatives to make amendments to the plan to enable a legitimate and good quality scheme to proceed in situations where there is a good reason for doing so.
- Secondary school has capacity for 550 pupils and has permission for an additional expansion. Primary school has seen its pupil numbers drop from 220 pupils to 204 pupils between 2020 and 2021 and the school has lost its 9th teacher. Worrying trends in a village which has significant sewage and transport capacity.
- Proposed density is similar to that in the surrounding village and the morphology is derived from existing development.
- While the overall density may be considered low at under 21 units per hectare the access area needs to be discounted from the overall site area and the road layout makes provision for development of further backland area. Future development will enable the direct access of housing from east west access and future phases will ensure that the overall density will significantly increase.
- Proposal creates a sense of neighbourhood based on the street and small clusters and is perfectly suited to the small village setting ensuring consolidation of the village and development of a sense of place.

- Takes account of Key Development Plan Objectives and provides an excellent housing mix (6 no one bed units, 9 no 2 bed units, 27 no 3 bed terraced units, 12 no 3 bed two storey semi detached units and 6 no 4 bed detached units).
- Creates an enclosed and attractive urban environment compatible with and in the same grain as the surrounding pattern of the village.
- Road network will provide maximum internal and external accessibility as well as social integration.
- No connection between the site and the River Blackwater SAC. No designated areas of biodiversity importance within the site.
- Appeal is substantially without merit. Many points of appeal are contradictory.
- Proposal makes provision for the comprehensive long-term rejuvenation of the village of Rathmore. Urge An Bord Pleanála to reject the appeal and grant permission as applied for.

6.3 Planning Authority Response

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

6.4 Observations

No submissions.

7 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider the key issues to be:

- Development Plan Policy – Material Contravention
- Site Context, Issues of density, layout, design and archaeology
- Traffic and road safety

- Appropriate Assessment Screening and Ecological Impact

7.2 Development Plan policy Material Contravention

7.2.1 The appeal site is located in the town of Rathmore which is designated as a District Town within the settlement strategy. It is a strategic aim of the settlement strategy to support the sustainable development and growth of these settlements to meet population targets and at a scale layout and design that reflects the character of each town, so they can act as adequate service and employment centres for the surrounding hinterland. The Kerry County Development Plan 2015-2021 includes Core Strategy Objective CS-1 to ensure that future spatial development of County Kerry is in accordance with National Spatial Strategy and the Regional Planning Guidelines for the south-west Region. CS-5 is *“to have regard to sequential development and the prioritisation of sustainable infill and brownfield development in the assessment of development proposals in urban area.”* The County Development Plan population allocation for Rathmore is 74 giving a housing requirement of 28 dwellings. Within the Killarney Municipal District Local Area Plan 2018-2024 Residential Objective KY-RES-01 is to facilitate the development of residential units within each settlement boundary in accordance with the Core Strategy. The site is on lands zoned strategic reserve and the proposal for 60 dwelling units exceeds the core strategy population allocation for Rathmore. As the proposal represents a material contravention of the core strategy Kerry County Council invoked the procedures prescribed in S34(6) of the Planning and Development Act 2000. As the Planning Authority granted the permission in accordance with the provisions of Section 34(6) of the Planning and Development Act 2000, the requirements of the provisions of 37 (2) (b) do not apply in this case, nevertheless, it is appropriate to assess the justification for material contravention.

7.2.2 I note the reasoning set out within the report of the Senior Executive Engineer and countersigned by the Senior Planner which outlines that *“towns such as Rathmore have suffered over the years from de-population due to the development of houses at the edge of the town / village or one-off houses in the open countryside. This is*

the first substantial housing development that has been applied for in Rathmore for a number of years. It is very much at the centre of the village and once occupied will help to rejuvenate the village by bringing new residents into the village.” It is asserted that the proposal complies with a number of local area plan objectives including KY-Res-04 in respect of consolidating the settlement and development a sense of place. KY-Res-05 regarding housing mix and KY-Res-07 regarding residential density.

7.2.3 I note that the Local Area Plan 2018-2024 was adopted on 17th December 2018 and has effect until 2024. Having assessed all documentation on the appeal file I note that neither the local authority nor the applicant have provided any detailed analysis of the residentially zoned lands and any relevant constraints or impediments to the development of these lands or any detail to indicate an exceptional circumstance whereby the development of the strategic reserve lands should proceed in advance of the zoned lands. Nor is there a wider analysis of social and economic infrastructure within the town or any insight into the basis for now rejecting the strategy and approach put forward through the development plan process. Within the first party response to the appeal, it is outlined that infrastructural capacity in terms of piped services and access to transport infrastructure as well as the changed context in terms of remote working and the significantly altered retail environment should be taken into account.

7.2.4 I consider that entirely inadequate justification has been provided to explain and defend the abandonment of the core strategy and the adopted zoning strategy. Furthermore, the scale of the development would be contrary to the general advice within the Sustainable Residential Development in urban Areas Guidelines, Department of Environment Heritage and Local Government 2009 which recommend that the scale of new residential schemes for development should be in proportion to the pattern and grain of existing development. *“Because of the scale of smaller towns and villages, it is generally preferable that overall expansion proceeds on the basis of a number of well-integrated sites within and around the town/village centre in question rather than focusing on rapid growth driven by one very large site.”* The guidelines note the function of the local area plans and any supplementary local

development frameworks to make recommendations regarding appropriate scale of overall development and suggest that for example, where a small town or village has grown rapidly in recent years, the LAP might recommend the phased development of a variety of sites over time, subject to a proviso that no one proposal for residential development should increase the existing housing stock by more than 10-15% within the lifetime of the development plan or local area plan.

7.2.5 I consider that a grant of permission would be contrary to the sequential approach to development and the core strategy, would set an undesirable precedent undermining the provisions of the Development Plan. In this regard I consider that the proposal to materially contravene the objectives of the Development Plan would be entirely contrary to the proper planning and sustainable development of the area.

7.3 Site Context - Issues of density, layout, design and archaeology

7.3.1 As regards the principle of demolition of the existing dwelling, I note that the structural report by Coghlan Consulting Engineers submitted in response to the request for additional information outlines that contraction cracking is visible on all elevations, plaster work to chimneys and front wall has come away from brick work and internally the timber floors wall and roof are in poor condition due to water ingress. There are holes in the slate roof and timber lintels to external walls are compromised due to wet rot.

7.3.2 I note that the existing dwelling appears to be of no particular architectural merit and based on the submitted details there is no fundamental objection to its demolition to facilitate the development of the lands for residential purposes. As noted above the dwelling site has been on the derelict sites register since 2008 and therefore the rejuvenation of the site is welcome and is in the interest of the amenities of the area.

7.3.3 On the issue of the context of the site within the wider masterplan lands which extend to approximately 10.84ha (26.6 acres) the application provides vague detail in terms of the future intentions. A provisional schedule of the masterplan lands is

referenced within the Traffic and Transport Assessment report by Coakley Consulting Engineers and makes reference to the following land uses:

- Residential Units : Approximately 120 units (Including 60 units for Phase 1)
- Nursing Home approx. 70 beds
- Mixed-Use Commercial / Retail / Café: approx. 20 no units and 2,000sq.m GFA in total
- Discount Retail Foodstore unit: approx. 2,000 sq.m GFA.

As noted above the size of the overall masterplan site lands would trigger the need for Environmental Impact Assessment.

7.3.4 I note that the masterplan layout indicates that three access routes (two vehicular and one pedestrian) to the overall masterplan site. Only one of these access routes is to be provided as part of the current proposal which would in my view represent a piecemeal approach which would compromise the achievement of integration and engagement with the established town centre. This is clearly at odds with Development Plan Objective KY-Res-08 which seeks *“to facilitate the preparation of masterplans for key settlements and identified strategic residential reserve landbanks to ensure future development integrates in a coherent and sustainable manner. Existing and potential access should be preserved to ensure ease of movement particularly for pedestrians and cyclists.”* I consider that the layout as currently configured (within the redline boundary) is somewhat detached from the existing town centre and does not provide for connection including pedestrian /cycle permeability. I consider that given the context of the site within the town of Rathmore incremental growth should be fully integrated and designed as a complete urban extension which is fully functional and accessible rather than a disjointed phase of a possible larger future development. On the issues of the appeal site’s configuration, I consider that this has not been explained and, in my view, it is somewhat harsh in terms of the failure to incorporate existing natural site features within the development proposal.

7.3.5 On the issue of density the proposal would equate to 20 units per hectare which would be considered unambitious in the context of a fully serviced and accessible site. As regards the layout I would agree with the third-party appellant that it is somewhat suburban in character and does not achieve the necessary qualities to create a sense of place. On the matter of public open space provision, I consider the provision to be poor in terms of location layout and utility.

7.3.6 As regards archaeological impact I note the Testing Report by Enda O Mahony, Archaeological Services, which records the location on the southern fringes of Sliabh Luachra (mountain of rushes) where the three counties Cork Kerry Limerick meet. The archaeological testing which was carried out on the masterplan lands 25 acres discovered two areas of archaeological interest being two levelled burnt mounds. Preservation by record was recommended. I note that the two sites of interest are located outside the current appeal site (redline) boundary.

7.4 Traffic and Road Safety and Servicing

7.4.1 As regards traffic and transport issues I note that the application is accompanied by a Traffic and Transport Assessment by Coakley Consulting Engineers. The report notes that an upgrade to the Rathmore streetscape has been designed by Kerry County Council and funding secured for its implementation in the coming years including new traffic calming measures resurfacing and reduced carriageway width and realigned junctions. The Traffic and Transport Assessment takes account of the entire masterplan area. The junction capacity analysis using PICADY programme demonstrates that the proposed access operates within capacity for all analysis periods with minimal queues and delay predicted and negligible impact on the capacity of Main Street. It is asserted that the local road network has sufficient reserve capacity to accommodate trips to and from the proposed phase 1 and the development of the overall masterplan lands. The Stage 1 /2 Road Safety Audit identified a number of issues within the design and all recommendations were accepted. The issue of the long straight access road within the development was identified as a problem which would encourage high speeds and some attempt was

made to address this issue within the response to request for additional information. I would consider that the issue of traffic and road safety would not be an impediment to development.

7.4.2 On the issue of servicing, I note the preliminary enquiry from Irish water indicates that water connection is feasible without infrastructure upgrade by Irish Water and wastewater feasible subject to upgrades.

7.5 Appropriate Assessment Screening and Ecological Impact

7.5.1 On the issue of appropriate assessment, I note the report of the biodiversity Officer Kerry County Council concluding that based on the fully serviced nature of the site, lack of direct connection and distance from the Blackwater (Cork Waterford) SAC and intervening distance buffered by urban fabric the potential for significant effect on the Blackwater River SAC can be screened out. It is reasonable to conclude that on this basis of the information on the file, which I consider adequate to issue a screening determination that the proposed development, individually or in combination other plans or projects is not likely to have significant effect on the Blackwater Cork Waterford SAC or any other European sites in view of the site's conservation objectives and a Stage 2 Appropriate Assessment and submission of an NIS is not therefore required.

7.5.2 As regards impact on biodiversity and ecology I have noted above my dissatisfaction with the proposal in its layout in terms of the failure to incorporate existing site features including hedgerows and I would concur with the third-party appellant that flora and fauna and biodiversity are poorly addressed within the application.

8.0 Recommendation

- 8.1. I have read the submissions on the file, visited the site, had due regard to the development plan and all matters arising. I recommend that permission be refused for the following reasons.

Reasons and Considerations

1. The site is located in an area zoned Town Centre M2 and Strategic Reserve 01 in the Killarney Municipal District Local Area Plan 2018-2024. It is an objective of the Development Plan KY-Res-01 to facilitate the development of residential units within each settlement boundary in accordance with the Core Strategy and objective KY-Res-03 to prohibit development on lands zoned as strategic residential reserve R4 until 80% of all other residential zoned lands have been developed to the satisfaction of the planning authority. These objectives are considered reasonable. It is considered that the proposed development would be contrary to the said objectives, and contrary to the Core Strategy, would set an undesirable precedent for similar such development in the vicinity and would thus be contrary to the proper planning and sustainable development of the area.
2. Having regard to its design, layout and configuration, it is considered that the proposed development would fail to respond to the unique characteristics of the site, would achieve poor connection with the established town centre and would not contribute to a sense of place making. The proposed development would, therefore, be contrary to the provisions of the Kerry County Development Plan 2015-2021 and Killarney Municipal District Local Area Plan 2018-2024, would injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

20th October 2021