



An
Bord
Pleanála

Inspector's Report ABP 311007-21

Development	Demolish 2 no. dwellings, construct 85 no. residential units and associated works.
Location	Cloon More, Tralee, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21/513
Applicant	Tulfarris CG Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Tulfarris CG Ltd.
Observer(s)	1. Martha O'Shea & Others 2. Kerry Education and Training Board
Date of Site Inspection	20/10/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Note: This constitutes the 2nd application and appeal for a residential development on the site. Permission was refused under ref ABP 307942-20 (20/335) for demolition of 2 no. dwellings and construction of 32 no. residential units.

The site is as previously described on the above referenced appeal and is as follows:

The appeal site has a stated area of 0.83 hectares and is located within the townland of Boherbee to the east of Tralee Town Centre. The site comprises a long narrow plot running along a north-west to south-east axis. It is occupied to the north by a pair of semi-detached, single storey dwellings and yard area to the rear with a greenfield extending to the south. The rear yard area was formerly occupied by outbuildings which have been demolished and hardcore material has been spread over the northern part of the site. The site is relatively flat along its length.

It is bounded by an undeveloped site to the west with a block wall delineating the boundary. To the west and south-west of the said undeveloped site is Mitchels Road and Hawley Park residential areas. A two storey dwelling (Cluain Mor guest House) accessed from a long driveway off the R875 to the north bounds the site to the east with its shared boundary delineated by a wall and hedgerow. A new school is currently under construction immediately to the south to be accessed via a new road recently developed off Mitchels Road to the south-west. The southern boundary of the site is delineated by a palisade fence.

The site is within a mixed urban area with Austin Stack Park GAA stadium located to the north west and Tralee Casement Railway Station and Tralee Bus Station a short distance to the northwest. There is a petrol station opposite with the Horan Shopping Centre located to the north east. The Christian Centre Community Church occupies the two-storey building adjacent to the north east of the site with a number of residential uses to the east and west. Kerry General Hospital is located to the south. The R875 bounds the site to the north with the Boherbee (Austin Stacks Park) roundabout in close proximity to the north-west.

2.0 Proposed Development

The application was lodged with the planning authority on 13/05/21. A response to objections received by the planning authority was submitted 02/07/21.

The development entails:

1. Demolition of 2 no. single storey dwellings along the northern boundary fronting onto the road.
2. Construct 85 no. residential units comprising -
 - 10 no. 2 bedroom dwellings
 - 2 no. 3 bedroom dwellings
 - 45 no. 1 bedroom apartments
 - 28 no. 2 bedroom apartments
3. New access from the road permitted to the north of the school currently under construction.

The application is accompanied by

- Urban Design Statement
- Housing Quality Assessment
- Traffic and Drainage Engineering Report
- Screening for Appropriate Assessment
- Environmental Impact Assessment – Preliminary Examination

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for 2 no. reasons which can be summarised as follows:

1. The planning authority is not satisfied that the development responds appropriately to the unique characteristics of the site and would lead to a disjointed and piecemeal form of development.

2. The proposal is premature pending the completion of phase 2 of the Clash to Ballymullen link road which is an objective of the Tralee Town Development Plan to develop.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **Planner's** report dated **07/07/21** (countersigned) refers.

- Tralee MD Roads notes that the Tralee LAP 2018-2014 identifies a new road connecting L-2072 Mitchels Road with L-10912 Marian Park and subsequently the R875 at Clash roundabout. Construction of Phase 1 of this road has commenced. Refusal recommended on grounds that the proposal is premature pending completion of the associated public road infrastructure.
- The proposal relates to only one part of developable lands. It would, therefore, constitute disorderly, piecemeal and uncoordinated development in the context of future development on the adjoining lands.
- The envisaged development on the lands to the east as shown in the indicative masterplan is essentially a mirror image of the proposed development. The proposal would restrict the development of adjoining lands along the linear progression of internal roadways as proposed. It is not considered feasible or desirable that lands of the adjoining site would be developed in the mirror image proposed. The masterplan also envisages development being focussed primarily to the west resulting in large blocks of open space being provided in 'parks' rather than an even distribution.
- It is essential for the lands to be developed under a single, coherent design in order to maximise the development potential of the full land bank in a manner that achieves a consistently high standard of development. A holistic overview and analysis of the overall lands is required.
- The indicative masterplan seeks to integrate the lands via 'Cloonmore Avenue'. As per the Tralee MD report the relief road is considered to present a more viable opportunity to access the public road network. The proposed

access to the west demonstrates the piecemeal and disorderly nature of the proposal.

- There are reservations with regard to the proposed Type 2 town houses.
- There are reservations as to the density proposed.
- It is not considered satisfactory to rely on potential shared parking facilities on adjoining sites.
- The extent of private and shared amenity space required and provided is not clear. One area of communal open space is not satisfactory.
- The proposed development seeks to utilise a school access off phase 1 of the Clash to Ballymullen link road. The applicant has not demonstrated sufficient legal interest to utilise this access. A suitable access has been identified off phase 2 of this link road which will serve the proposed development in conjunction with the undeveloped lands immediately adjacent to the east.

A refusal of permission for 2 reasons recommended.

3.2.2. Other Technical Reports

Housing Estates Unit in a report dated **02/06/21** notes that the development will not be taken in charge. Revised site layout plans with details and amendments shown thereon required. Clarification required as to the width of the road at the northern end and whether the red development line includes Cloonmore Avenue. Traffic Safety Audit to be conditioned.

County Archaeologist in a report dated **08/06/21** notes there are no recorded monuments on the site. Given the scale of the development and proximity to recorded monument K3029 119 (medieval town of Tralee) pre-development archaeology testing and preparation of report prior to commencement of development recommended.

Engineer, Flooding and Coastal Protection Unit in an email dated **18/06/21** recommends further information on SuDs design.

Biodiversity Officer in a report dated **21/06/21** concludes that significant effects on European sites can be excluded and AA is not required. Conditions recommended.

3.3. Prescribed Bodies

Irish Water in a report dated **22/06/21** has no objection subject to conditions.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised pertain to:

- Impact on amenities of adjoining property and devaluation of property
- Noise and air pollution
- Access and traffic, lack of Traffic Assessment and Road Safety Audit
- Light spill
- Vermin
- Inclusion of 3rd party lands to facilitate vehicular access and removal of wall for interconnectivity
- Site services and stormwater disposal
- Absence of turning bays in cul de sacs for large vehicles

4.0 Planning History

ABP 307942-20 (20/335) – permission refused for demolition of 2 no. dwellings and construction of 32 no. residential units for 3 reasons which can be summarised as follows:

1. Proposed access from R875 in proximity to Boherbee (Austin Stacks) Roundabout would give rise to traffic conflict and congestion and would endanger public safety by reason of traffic hazard.
2. The Board considered that the proposed development, by reason of its design and layout, and the nature of provision of private amenity space, would be contrary to the urban design policy objectives of the Tralee Town Plan 2009-2015 and the guidelines for Sustainable Residential Development in Urban Areas. It is considered that the proposed development would result in a substandard form of development for future residents and, in the context of

overall development of the wider undeveloped lands, of which the site forms part, would not achieve an appropriate standard in terms of the creation of place and a long term sustainable neighbourhood. The proposed development would set an undesirable precedent for similar such development.

3. Having regard to the location and configuration of the appeal site in the context of the adjoining undeveloped lands to the east, and within the Mitchels Boherbee Regeneration Area, and to the layout and design of the proposed development, the Board was not satisfied that the proposed development responds appropriately to the unique characteristics of the site context and considered that the proposal would lead to a disjointed and piecemeal form of development. The Board also noted the unacceptably low density on serviced and zoned lands.

19/272 - Permission granted for 600 pupil post primary school with sports hall.
Proposed site access from the approved Part 8 Ballymullen Clash Link relief road.

5.0 Policy Context

5.1. Development Plan

5.1.1. Tralee Town Plan 2009 (as extended)

The site is within an area zoned R2 Existing Residential.

Section 11.4 Existing Residential/Town Centre Area/Built Up Areas (R2/M2/M4)

It is the policy of the Local Authority to facilitate development that supports, in general, the primary land use of the surrounding built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.

Policy Objective HP06 - Have regard to increased residential densities in appropriate locations in accordance with Sustainable Residential in Urban Areas while ensuring that the overall character of the area shall be maintained.

Policy Objective HP22 - Ensure that residential densities reflect the density of appropriate adjoining development. Higher densities will be considered in the town centre or within close proximity to the town centre.

Transport Strategy Objective TTS-06 - Develop the Clash to Ballymullen link road

Urban Design Policy Objectives are outlined in Chapter 8 Built Environment and Urban Design.

Section 8.6.3 Mitchels Regeneration - In 2004, Tralee Town Council identified the Mitchels Boherbee area of the town as being in need of major regeneration in order to deal with the underlying physical economic and social problems that have affected the area. The masterplan includes a number of major projects including the Gaelscoil 600 pupil school and Ballymullen to Clash Inner Relief Road.

Chapter 12 sets out the development management standards for residential development.

5.2. Tralee Municipal District Local Area Plan 2018-2024

The LAP includes the mapped Mitchels Boherbee Regeneration Area Masterplan, September 2017.

Section 3.2.5 states that the masterplan will continue to be updated in consultation with the local community and its implementation and delivery will be supported by this plan.

5.3. Natural Heritage Designations

The nearest designations include Tralee Bay and Magharees Peninsula West to Cloghane SAC (2km) and Ballyseedy Wood SAC (1.8km).

6.0 The Appeal

6.1. Grounds of Appeal

The 1st Party appeal, which is accompanied by supporting documentation including a Traffic and Transport Assessment, can be summarised as follows:

6.1.1. Masterplan and Co-Ordinated Development

- The proposal includes a masterplan for the whole neighbourhood and seeks to integrate the development with the lands to the east and the wider neighbourhood. It will provide a permeable, fully integrated neighbourhood in the Mitchels Regeneration Area. It will correctly rebalance the neighbourhood as a whole to integrate with Hawley Park, its community centre, creche and sheltered housing. It offers a clear viable plan. The proposal will not preclude the proper development of adjacent sites and does not constitute piecemeal development. The proposal will act as a catalyst to spur the delivery of additional projects in a coordinated and considered manner.
- It is more comprehensively integrated compared to Kerry County Council's diagram showing a 'Potential Draft Systematic Layout of Private Lands'.
- The framework plan is indicative and is open to redesign. It sets up a pattern for highly efficient land use for low rise, high density development.
- The framework plan will facilitate up to 200 residential units which will be a significant driver and rationale for funding of phase 2 of the Clash - Ballymullen link road.
- The Council has been unable to offer any viable alternative. To delay the proposed development for the sake of an unrealistic goal of all 5 acres being developed simultaneously is a poor planning decision.
- There is deep uncertainty around the current availability of the other sites. Coupled with the lack of clarity around the County Council objectives for this land there is no other alternative to that proposed that will deliver residential units within the timeframe of the current Tralee LAP or even the next LAP.

6.1.2. Access and Traffic

- Cloonmore Avenue will provide access to the school, community centre and Kerry County Council sheltered housing. It is the most appropriate access for the site. The road abuts the site for over 100 metres.
- The access junction has sufficient capacity to accommodate the proposal.
- The access road was always intended as a piece of public infrastructure. It was shown in the Part 8 approval and on the Mitchels Area Regeneration Plan as extending for the full length of the car park. There is no reason that the road cannot be continued. It has no detrimental impact on KETB lands.
- It made sense to interlink the site with Cloonmore Avenue to create an open permeable road and street network for the area that optimizes the use of scarce public land and road infrastructure.
- If facilitated Cloonmore Avenue can deliver a fully integrated solution which will give significant opportunities to address and solve the risk of anti-social behaviour related to walled backland playing fields.
- Kerry County Council has an obligation to facilitate this access in light of the agreement to close off the existing Boherbee Road site entrance to vehicular traffic.
- As a temporary measure access to the site can be secured opposite the entrance to the Hawley Park Community Centre car park. A temporary road can be established until KETB agree the access road with Kerry County Council Housing. A condition could be attached requiring same.
- The framework plan allows for a 2nd access off the Link Road. This will serve to enhance road access to the current and next phases of the land development and interlink the whole.
- Phase 2 of the Ballymullen-Clash link road has little relevance to the application since it does not bound the site.
- The impact on traffic in the area would be negligible.
- The applicant has no objection to permission being conditional on the road being completed.

- It will act as a catalyst for the continued redevelopment of the Mitchels Regeneration area and link road infrastructure.
- Proper planning and development principles support the concept that multiple points of access should be facilitated to these lands in the interests of creating a diverse, permeable and integrated road network and street layout for the neighbourhood.

6.1.3. Other Issues

- The development does not depend on any consents or lands from KETB.
- Pre planning consultation was refused.
- The Type 2 house design is in response to its location on an end of terrace.
- The 'effective site area' approach recognises the building line along the Boherbee Main Road, Cloonmore Avenue and New Link Road with generous widths and open parkland and the school's sports fields adjacent, which provide significant open space and amenity. It gives a more balanced appraisal when comparing a site within its surrounding context. It is appropriate that such measures be used on a wider scale to counter excessively restrictive low density solutions.
- The design meets all open space requirements within its own boundaries.
- It is considered inappropriate to apply the parking criteria of 2 spaces per unit in such a central urban area. It is contrary to urban design principles and the Apartment Guidelines.
- Revised calculations for SuDs provided.
- On issues such as turning bays it is noted that the side streets are very short and it is expected that the development will extend eastwards within a short timeframe. As such turning bays were not a priority. There is no objection in converting 3 spaces in two streets to accommodate these should it be considered appropriate. Other minor issues raised by the planning authority can be addressed by simple modification and do not compromise the overall development.

6.2. Planning Authority Response

None

6.3. Observations

6.3.1. Anne O'Shea & Others

- Impact on amenities of their B & B, loss of privacy and overlooking
- Inadequate boundary treatment
- Adverse impacts during construction phase
- Traffic congestion
- Increased noise and light spill

6.3.2. Kerry Education and Training Board

- The development layout requires and depends upon vehicular access via its lands, including the reconfiguration and extension of a permitted but as-of -yet unconstructed roadway internal to its lands and to which it has not consented to.
- The site layout submitted with the application depicts a site layout on its lands that does not exist and is not anticipated to exist since it is different from the permitted site layout. In compliance with condition 1 attached to permission 19/272 it is intended to develop the site in accordance with the permitted plans and particulars.
- The permitted access road has been designed to cater for school traffic and to provide access to a proposed community centre car park, only. Parking need generated by the proposal may not be fully catered for on-site and may need to be partially addressed by using 3rd party lands.
- The site layout follows the layout in the Mitchels/Boherboy Regeneration Area Masterplan dated September 2017. A masterplan is not a prescriptive document and does not dictate exact future site layouts.

- The proposed alternative temporary access road would also involve development on its lands. There are serious concerns regarding public safety. The option should not be considered.
- The development includes significant alterations to an existing party boundary wall which it has not consented to. It is important for pupil safety and insurance that any potential future playing fields in this area have a secure boundary. It is open to considering less visually imposing options.
- Until such time as it finalises its proposals for development of the northern section of its site it is not in a position to give consent to a 3rd party to develop its lands in any way that could restrict the future development of this part of the site.
- The planning application and appeal documents contain inconsistencies, do not support best practice in terms of urban design and sustainability and demonstrate that the proposal does not comply with various statutory guidelines.
- It fails to meet the appropriate standards in terms of public and private open space. The proposed layout would have the result of undermining the realisation of a sustainable, healthy neighbourhood on the site.
- Issues with respect to traffic, stormwater and foul water disposal have not been adequately addressed.
- As the proposed development is not specified as a social housing scheme the inclusion of 9 no. 2 bed 3 person apartments amounting to 10.6% of the overall scheme should be considered as inappropriate.
- Sufficient detail on Part V proposals not provided.
- The western elevation of the scheme illustrates a lack of coherent design language which results in a failure to integrate the proposed courtyard townhouses with the rest of the development.

7.0 Assessment

I consider that the issues arising in the appeal can be addressed under the following headings:

- Overview
- Legal Interest
- Access and Traffic
- Density, Layout and Design
- Amenities of Adjoining Property
- Environmental Impact Assessment
- Appropriate Assessment

7.1. Overview

- 7.1.1. This constitutes the 2nd application and appeal for a residential development on the site. Permission was refused under ref ABP 307942-20 (20/335) for demolition of 2 no. dwellings and construction of 32 no. residential units for 3 reasons relating to unacceptable access arrangements from the R875, inadequacies in the layout and design resulting in a substandard form of development and failure to respond appropriately to the unique characteristics of the site context resulting in a disjointed and piecemeal form of development. The Board also noted the unacceptably low density on such serviced and zoned lands.
- 7.1.2. The site forms the western most section of a larger, undeveloped area of land to the rear of properties that front onto the R875. The lands are in multiple ownership. I note that an indicative layout for the lands was given in the Mitchels Regeneration Master Plan. The Tralee Municipal District LAP 2018 which replicates the said masterplan states that it will continue to be updated in consultation with the local community and its implementation and delivery will be supported by the LAP.
- 7.1.3. To address the refusal of permission pertaining to the overall development of the wider undeveloped lands the applicant has prepared its own indicative masterplan and references the lands immediately to the west. The plan differs materially from that prepared by the planning authority. Whilst there may be merit in preparation of

such a plan, I do not consider that it is appropriate that it be prepared by one landowner with no input from the other(s) affected. Although it is contended that the indicative layout can be amended and is not prescriptive there is no question that the proposed development imposes a strong influence in terms of the road layout and, to a certain extent, the residential style and design. I note that whilst the applicant contends that the proposed development will act as a catalyst to spur the delivery of additional projects in a coordinated and considered manner it somewhat contradicts this view by stating that there is deep uncertainty around the availability of the other sites.

- 7.1.4. I submit that such a masterplan would more appropriately be prepared by the planning authority as has been done, the updating of which is explicitly allowed for in both the Town Development Plan and the Municipal District LAP. At the very minimum the planning authority's input into such a new plan would be required. Whilst I note the applicant's criticisms levelled at the planning authority in terms of failure to facilitate a pre-application meeting this is not a matter for comment in this appeal.

7.2. Legal Interest

- 7.2.1. Kerry Education and Training Board (Kerry ETB) has secured permission under planning reference 19/272 for a new school on lands immediately to the south of the appeal site. As part of the said application and permission the Board is to construct an access road from the 1st phase of the Ballymullen-Clash relief road. The access is located immediately to the north of the school and is to serve a new car park for St. Brigid's community centre (which is currently accessed from Hawley Park) and sheltered housing proposed by Kerry County Council. The school is under construction. Works on the access road have not yet commenced. The 1st phase of the Ballymullen-Clash relief road currently terminates just north of the school site. The 2nd phase will extend it to the R875 Clash Roundabout at Marian Park to the north-east. As per the details accompanying the Kerry ETB submission on the application and subsequently by way as an observation on this appeal the proposed access road as permitted are on lands owned by it which will be ceded to the local authority on completion of the school.

- 7.2.2. Kerry ETB also owns lands to the west of the appeal site, the future use of which has not been formally determined but will most likely be used as playing fields. A block wall currently delineates the shared boundary between the said lands and the appeal site.
- 7.2.3. The substantive issue arising pertains to the proposed extension of the permitted access road (titled 'Cloonmore Avenue' on the documentation on file) to facilitate access to the development. Over and above the fact that it will require modifications to that as permitted under ref. 19/272, it entails works on lands in Kerry ETB's ownership and not the applicants. The proposal also requires the demolition of the wall along the shared boundary. This is acknowledged in a letter by the applicant's agent to Kerry ETB dated 21/01/21, a copy of which accompanies the observation. Consent for same is not forthcoming.
- 7.2.4. I would accept that the access road as permitted will become public infrastructure and that the applicant could reasonably seek permission to modify and extend same. Whilst reference is made to discussions and agreements with the Council's Roads Engineer there is no evidence of same or agreements reached on file. Notwithstanding, the fact remains that works to allow for the said extension are required on 3rd party lands for which consent is not forthcoming.
- 7.2.5. As noted in section 5.13 of the Development Management Guidelines the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and that these are ultimately matters for resolution in the Courts. On the basis of the detail provided the Board cannot be satisfied that the applicant has sufficient legal interest in the lands on which the access road is proposed or has the approval of the person(s) who has such sufficient legal estate or interest.
- 7.2.6. By way of unsolicited further information a temporary access arrangement is put forward to avoid the 3rd party lands and which will require the loss of proposed open space. However the alternative appears to still entail works to the 3rd party lands in terms of the demolition of the wall along the shared boundary to which consent is not forthcoming. As noted by the agent for the observer the Development Management Guidelines state that the consideration of such unsolicited further information should only be countenanced where it relates to non-contentious issues. That is clearly not

the case in this instance. I do not consider that it would be appropriate for the said arrangement to be assessed at this juncture.

7.3. Access and Traffic

- 7.3.1. It is not unreasonable to surmise that the proposed access arrangements stem from the Board's previous decision to refuse permission for a residential scheme on the site whereby vehicular entrance from R575 was considered unacceptable with the potential to give rise to traffic conflict and congestion. The Inspector in her assessment considered that any development of the site in the context of the wider lands should be assessed with a view to the potential for links to the new road being constructed to the south.
- 7.3.2. I note that the appeal is accompanied by a Traffic and Transport Assessment in which it is concluded that 'Cloonmore Avenue' and its junction onto the relief road can accommodate the additional vehicular movements that would be generated by the development.
- 7.3.3. From the details accompanying the application the agent for the applicant engaged with the Council's Area Engineer which is stated to have recommended that the site be accessed from the relief road under construction (see Appendix A – Site Access). As noted previously there is no evidence to this agreement on file with no report recorded from the said Area Engineer. Indeed I note that the Planner's report states that the Operations Department of the Tralee Municipal District Office considered that the completion of the relief road would allow for more a viable opportunity for a development of this nature to access the public road network. It concluded that the proposal is premature pending the completion of the public road infrastructure required to service the proposed development. Although requested from the planning authority a copy of the said correspondence is not on file.
- 7.3.4. I note that the indicative drawing as set out in the Town Development Plan and replicated in the LAP' in showing the proposed 'Cloonmore Avenue' and its development northwards to serve the potential future playing fields, does not delineate access to the lands to the west (inclusive of appeal site). The said lands are to be served by a separate access from the relief road further north and which is to be developed as 'phase 2'.

7.3.5. As stated previously I consider that the planning authority with input from the relevant local authority sections including the Roads Department is best placed to formulate a framework plan for the wider lands which will be opened up on the development of the said road to ensure the efficient and sustainable use of the public infrastructure. On this basis I consider that the proposal is premature.

7.4. **Density, layout and design**

7.4.1. The layout, design and number of residential units has fundamentally altered following the Board's previous refusal of permission. The proposed development entails the demolition of the two single storey dwellings fronting onto the road and construction of 85 residential units. On a site of 0.83 hectares this equates to approx. 103 units per hectare which is significantly greater than that previously proposed at 38.5 units per hectare and which was considered to be unsustainable on such a serviced and zoned site. The agent for the applicant justifies the higher figure on the basis of its location on a central, accessible urban site with an open periphery to the west where sports fields are proposed.

7.4.2. In principle and whilst high, there is no impediment in terms of maximum densities on such a site. Notwithstanding, the acceptability or otherwise of the proposal is predicated on other planning considerations being met including the acceptability of the design solution, impact on amenities of adjoining property, the securing of adequate amenities for prospective occupants and access and traffic.

7.4.3. The mix proposed in the scheme is as follows:

- 10 no. 2 bedroom dwellings (11.7%)
- 2 no. 3 bedroom dwellings (2.35%)
- 45 no. 1 bedroom apartments (52.9%)
- 28 no. 2 bedroom apartments (32.94%)

7.4.4. The application is accompanied by a Housing Quality Assessment in which the scheme is assessed against the standards as set out in the Apartment Guidelines.

7.4.5. Within the context of the overall scheme the number of 1 no. bedroom apartments equates to almost 53%. In terms of the apartment component, only, this increases to 61.6%. This exceeds the 50% ceiling as specified by SPPR1 of the Apartment

Guidelines. The predominance of such 1 bedroom units can only be subject to an evidence based Housing Need and Demand Assessment (HNDA) and incorporated into the development plan or justified in terms of it being a social housing scheme. There is no detail on file to suggest that the scheme is such a social housing development.

- 7.4.6. The apartments meet the minimum apartment floor areas as set out in SPPR3. The 9 no. 2 bed 3 person apartment units equates to 9.41% of the overall units and is 12.3% of the apartment component only. This exceeds the 10% maximum stipulated for private residential development in the Apartment Guidelines.
- 7.4.7. In terms of daylighting and sunlighting the relevant guidelines pertaining to apartment development require planning authorities to have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' which offer the capability to satisfy minimum standards of daylight provision. A schedule of compliance with the relevant standards does not accompany the application.
- 7.4.8. In view of the low rise nature of the overall scheme, the layout, orientation and design of the residential units, and the pattern of development on adjoining lands, I am satisfied that no issues in terms of daylighting and sunlighting in the residential units, open space areas within the scheme or existing development on adjoining lands will arise.
- 7.4.9. The scheme accords with SPPR 4 in that in excess of 33% of the apartments are dual aspect as would be applicable for such a central and accessible urban locations. There are a number of north facing single aspect apartments in the apartment block proposed along the southern boundary.
- 7.4.10. The floor to ceiling heights and number of units per floor per core meet the minimum requirements as set out in SPPR5 and SPPR6.
- 7.4.11. The apartment units meet the required minimum floor areas and standards as set out in Appendix 1 of the guidelines.
- 7.4.12. The application of the standards as set out in the Apartment Guidelines to the townhouses is misplaced. The provisions of Quality Housing for Sustainable Communities are applicable. The 12 no. two bed, 4 person townhouses, at 86.6

sq.m., meet the minimum requirement of 80 sq.m. as set out in Table 5.1 of same whilst the 2 no. 2-3 bedroom, 5 person townhouses, at 92.4 sq.m., meet the minimum of 92 sq.m. The rear garden areas vary between 30 and 52 sq.m. and are considered acceptable.

- 7.4.13. Public open space is effectively limited to the area of 518 sq.m. adjacent to the proposed access road extension. The figure of 735 sq.m. given on some of the plans accompanying the application is incorrect. The correct figure equates to 6.24% of the site area. Reliance is placed on the central location immediately adjacent to lands which are yet to be developed for playing fields associated with the school under construction, and also to the location of further open space within the prepared framework plan, largely delineated on 3rd party lands to the east. This approach, relying on as yet undeveloped amenities, is somewhat premature especially in view of the concerns expressed as to whether the undeveloped lands to the west would be brought forward for development. On this basis I submit that the provision within the scheme, itself, is insufficient.
- 7.4.14. 67 no. parking spaces in grouped arrangements are proposed to serve the scheme which equates to 0.80 spaces per residential unit. Taking into consideration the Apartment Guidelines which allow for the reduction in car parking at locations that are served by public transport or close to town centres or employment areas, coupled with the need to encourage sustainable travel patterns the provision is acceptable. I would submit that reference to the potential dual usage of carparking spaces that are proposed to serve the community centre is somewhat misconceived.
- 7.4.15. Overall, I consider that the scheme design exhibits the characteristics of overdevelopment and would benefit from reconsideration with due cognisance given to a greater variety of housing mix and open space provision. I consider that this constitutes a new issue. The Board may wish to seek the views of the parties. However, having regard to the substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

7.5. Amenities of Adjoining Property

- 7.5.1. In terms of amenities of nearest adjoining property Cluain Mor B & B is a two storey dwelling immediately to the east of the appeal site set back from its entrance off the R875 to the north. The guest house has enjoyed the benefit of the undeveloped

nature of the adjoining lands however the site is located within the town of Tralee and is zoned for development. On this basis there is an anticipation that the lands would be developed at some stage. Inevitably any development of the site will bring about a change in the streetscape and character of the immediate area including night light levels etc.

- 7.5.2. I consider that the proposed development has due cognisance of the said dwelling with two storey townhouses to be located alongside the shared boundary with the higher apartment/duplex units at a remove. Certainly, a level of overlooking to the front of the property will arise but such juxtaposition with oblique overlooking is not unusual in such an urban context.
- 7.5.3. Issues arising during the construction phase could be adequately addressed by way condition.

7.6. Environmental Impact Assessment

- 7.6.1. An Environmental Impact Assessment – Preliminary Examination report was submitted with the application
- 7.6.2. The proposed development comprises 85 residential units on a 0.83 hectare site.
- 7.6.3. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.
- 7.6.4. The number of dwelling units proposed at 85 is well below the threshold of 500 dwelling units noted above. Whilst within the town of Tralee it is not in a business district. The site is, therefore, materially below the applicable threshold of 10 hectares.
- 7.6.5. The proposal for 85 residential units is located within the development boundary of Tralee on lands zoned existing residential in the current Tralee Town Development Plan (as extended). The site comprises of 2 no. dwellings which are to be demolished and a field under grass with hedgerows and walls delineating the boundaries. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage. The proposed development will not

have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The existing wastewater treatment plant serving the town of Tralee has a plant capacity PE of 50333 and has sufficient capacity to accommodate the development. The site is not within a European site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive. The application is accompanied by an Urban Design Assessment with a Traffic and Transport Assessment submitted with the appeal. These address the issues arising in terms of the sensitivities in the area.

7.6.6. Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site on lands within the development boundary of Tralee on lands zoned existing residential under the provisions of the Tralee Town Development Plan, 2009-2015 as extended and the results of the strategic environmental assessment of the Tralee Town 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 area.
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

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

7.7. Appropriate Assessment – Screening

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

- 7.7.2. The application is accompanied by Screening for Appropriate Assessment report. It was prepared by Malachy Walsh and Partners Engineering and Environmental Consultants and is dated 22/04/21. It was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development.
- 7.7.3. The report concluded that the proposal is not expected to result in any significant ecological impacts to Natura 2000 sites given the location within a built-up area of an urban centre (green field site) and the absence of direct impact pathways between the proposal site and any designated site.
- 7.7.4. Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Screening for Appropriate Assessment- Test of likely significant effects

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

Brief description of the development

7.7.7. The applicant provides a description of the project on pages 7-12 of the AA screening report and elsewhere eg. Urban Design Statement. In summary, the development comprises:

- Demolition of 2 no. dwellings
- 85 residential units
- Extension of permitted access road
- Connection to the public sewerage and water supply schemes is proposed.

The development site is described in pages 7 and 8 of the screening report. It is described as comprising predominantly a greenfield site with 2 no. vacant dwellings and associated hard surface areas along the northern boundary. There are no watercourses on or in the vicinity of the site. The nearest is the River Lee c. 700 metres to the south-west.

7.7.8. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

Construction Phase:

- Surface water run-off from the site that contains silt, sediments and/or other pollutants impacting water quality in downstream Natura 2000 sites.

Operational Phase:

- Surface water run-off from the site that contains silt, sediments and/or other pollutants impacting water quality in the downstream Natura 2000 site.
- Foul effluent discharges impacting water quality in downstream Natura 2000 sites.

Submissions and Observations

7.7.9. None received.

European Sites

7.7.10. The development site is not located in or immediately adjacent to a European site. The closest European site is Ballyseedy Wood SAC (site code 002112) c. 1.8 km to

the south-east of the proposed development. A summary of the sites within 15km of the site are given in Table 1

7.7.11. *Identification of Likely Effects*

- There is nothing unique or particularly challenging about the proposed urban development, either at construction phase or operational phase.
- There are no watercourses in the vicinity of the site, the nearest being the River Lee c.700 metres to the south-west. The site is separated from same by existing urban development. There are no direct pathways to the watercourse.
- The measures to be employed at construction stage are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.
- The site is to connect to the existing public sewer and water supply. Surface water runoff is to be discharged to the public sewer.
- The pollution control measures to be undertaken during the operational phase are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.
- The foul discharge from the proposed development would drain, via the public network, to the Tralee Waste Water Treatment Plant. There is sufficient capacity in the treatment plant to accommodate the proposed development. On this basis, I am satisfied that the potential for significant impacts on the Natura 2000 sites due to impacts arising from foul discharges from the proposed development can be screened out.
- The site does not support habitats of ex-situ ecological value for qualifying interest species of the SPAs within the zone of influence. In view of the separation distance and extent of development in the said intervening distance no impacts are envisaged.

7.7.12. Cumulative impacts are addressed in Section 4.2.6 of the screening report for AA. It takes into consideration a number of proposed developments which have secured

permission in the vicinity including residential and commercial development. It also takes into consideration plans for the area including the Kerry County development Plan and the Tralee/Killarney Hub FALAP 2013-2019. It concludes that in view of the characteristics of the site and its surrounds, located within a built up area within Tralee, the absence of any watercourses draining the site and the size and scale of the proposal it is not envisaged that the project has any potential for interaction with other projects, plans or activities which could result in significant cumulative effects.

Mitigation Measures

- 7.7.13. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

- 7.7.14. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 002112, 004188, 002070, 002185, 004161, 000332, 002165, 000343, 004029 or any other European site, in view of the sites' Conservation Objectives and Appropriate Assessment (and submission of a NIS) is not therefore required.

This determination is based on the distance of the proposed development from the European Sites and demonstrated lack of any ecological connection.

Table 1 - Summary Screening Matrix				
European Site	Distance to proposed development/ Source, pathway receptor	Possible effect alone	In combination effects	Screening conclusions:
Ballyseedy Wood SAC (site code 002112)	1.79 km to south-west No hydrological connection	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Tralee Bay Complex SPA (site code 04188)	2km to south-west No direct hydrological connection. No habitats suitable for designated species on site	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Tralee Bay and Magharees Peninsula, West to Cloghane	2.15km to south-west	No possibility of effects due to the separation distance and absence	No effect	Screened out for need for AA

SAC (site code 002070)	No hydrological connection	of ecological connections		
Slieve Mish Mountains SAC (site code 002185)	3.23km to south No hydrological connection	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161)	5.65km to north-east No hydrological connection No habitats suitable for designated species on site	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Akeragh, Banna and Barrow Harbour SAC (site code 000332)	10km to north-west No hydrological connection	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA

Lower River Shannon SAC (site code 002165)	11.4km to north-east No hydrological connection	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Castlemaine Harbour SAC (site code 000343)	12km to south-west No hydrological connection	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA
Castlemaine Harbour SPA (site code 004029)	12.8km to south-west No hydrological connection No habitats suitable for designated species on site	No possibility of effects due to the separation distance and absence of ecological connections	No effect	Screened out for need for AA

8.0 Recommendation

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

9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and the appeal, the Board is not satisfied that it has been demonstrated satisfactorily that the applicant has sufficient legal estate or interest in the land on which the access road is to be constructed to serve the residential development or has the approval of the person(s) who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development subject of the application.

2. Having regard to the location and configuration of the appeal site in the context of the adjoining undeveloped lands to the east within the Mitchels Regeneration Area, and to the current Tralee Town Development Plan objective TTS-06 to develop the Clash to Ballymullen link road which shall serve the said undeveloped lands, it is considered that the proposed development is premature pending the completion of phase II of the Clash to Ballymullen link road and, if permitted, could prejudice the appropriate and sustainable development of the overall lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

November, 2021