



An
Bord
Pleanála

Inspector's Report ABP 311270-21.

Development	Demolition of the existing two storey former CBS monastery building and the construction of a residential development comprising 23 residential units.
Location	Site of former CBS monastery building Tralee, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21/113
Applicant	Nailun Limited
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party and First party vs. condition.
Appellants	(1) Michael Horgan (2) Anne-Marie Fuller and others (3) Nailun Limited
Observers	None

Date of Site Inspection

21st January 2022

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.5 hectares and is located to the southern side Tralee Town Centre. The site contains a two-storey detached building which was formerly the CBS monastery building. The site has a high walls along all site boundaries. There is a gated vehicular access to the site at its south-western corner. This access is onto a small cul de sac off the main estate road within Castle Countess.
- 1.2. Castle Countess and Castle Demesne are the existing housing areas immediately to the west and south of the site. The housing within Castle Countess comprises two-storey semi-detached dwellings. Castle Demesne contains detached bungalows.
- 1.3. The site is bounded by the CBS Secondary School to the east. The southern site boundary adjoins the side boundary of a semi-detached two-storey dwelling within the cul de sac in Castle Countess. The western site boundary adjoins a pedestrian laneway linking Castle Countess with Tralee Town Park. Tralee Town Park bounds the site to the north. There is pedestrian access through the park to Tralee Town Centre.
- 1.4. The N68 National Secondary Road is situated to the south of the Castle Countess. The Aqua Dome leisure centre is situated immediately to the south of this road.

2.0 Proposed Development

- 2.1. Permission is sought for the following;
- 2.2. Demolition of the existing two storey former CBS monastery building.
- 2.3. The construction of a residential development comprising 23 residential units (1 no. 1 bed, 17 no. 2 beds and 5 no. 3 bed units) as follows: 9 no. 2 storey semi-detached and terraced dwellings (4 no. Two bed and 5 no. 3 bed dwellings) and 14 no. Apartment units in a four storey (3 storey plus 4th floor set back) over basement apartment block comprising 1 no. 1 bed and 13 no. 2 bed apartment units with each apartment provided with balcony/terrace.
- 2.4. The proposed development also provides for 32 no. Car parking spaces (16 no. Spaces at basement level and 16 no. Spaces at surface level) bicycle parking (28

no. Spaces at basement level and 12 no. Spaces at surface level) utilisation of existing vehicular entrance from castle countess with new gates proposed, reinstatement of access to the existing pedestrian link from castle demesne to Tralee town park, bin store, ESB substation, landscaping including play area, boundary treatments and all associated and ancillary site works necessary to facilitate the development.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 19 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Further information was requested in relation to the following matters;

1. Roads and pedestrian connectivity.
2. Surface Water.
3. Sustainable Urban Drainage System.
4. Issues raised by the Housing Estates Unit.
5. Overlooking.
6. Open space and daylight/sunlight assessment.
7. Photomontages.
8. Disabled parking.
9. Refuse disposal.
10. Bicycle Storage.
11. Storage rooms.
12. Satellite dishes.
13. Building Lifecycle report.

- Clarification of further information was requested in relation to the following matter.
- 1. Applicant was requested to submit a more detailed drawing outlining the proposed actions resulting from section 2.2 of the Stage 1/2 Road Safety Audit.
- Following the submission of responses to the further information and clarification of further information sought the Planning Authority were satisfied with the details provided and a grant of permission was recommended.

3.2.2. Other Technical Reports

3.2.3. Roads, Transportation & Marine Department, Tralee MD: No objection subject to conditions.

3.2.4. Water Services Department: Surface water must be removed from the foul sewer.

3.2.5. County Archaeologist: No objection subject to condition.

3.2.6. Housing Estates Unit: number of matters raised can be addressed by further information or by condition.

3.2.7. Fire Authority: Fire Access Cert and Disability Cert may be required.

3.2.8. Environment Department: No objection subject to conditions.

3.2.9. Architectural Conservation Office: No objection

3.2.10. Flooding & Coastal Protection Unit: No objection. Conditions to be attached if permission is granted.

3.2.11. Biodiversity Officer: Further information required.

3.3. **Prescribed Bodies**

Irish Water: No objection subject to condition.

3.4. **Third Party Observations**

3.4.1. The Planning Authority received a number of submissions/observations in relation to the application. The issues raised are similar to those raised in the third party appeals.

4.0 Planning History

- None

5.0 Policy Context

5.1. Development Plan

5.1.1. Tralee Town Development Plan 2009-2015 (as extended and varied)

5.1.2. The site is within an area zoned R2 Existing Residential.

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

5.1.4. 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.

5.1.5. 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.

5.1.6. Policy Objective HP022 - 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.

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

5.2. Natural Heritage Designations

5.2.1. Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site Code 002070) is located 1.1m to the west of the appeal site. Tralee Bay Complex SPA (Site Code 004188) is situated 1km from the appeal site.

5.3. Environmental Impact Assessment

5.3.1. The proposed development comprises 23 residential units on a 0.5 hectare site.

- 5.3.2. 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.
- 5.3.3. The number of dwelling units proposed at 23 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.
- 5.3.4. The proposal for 23 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 the former CBS monastery building which are to be demolished and grounds 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.
- 5.3.5. 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Two third party appeals were received by the Board.

(1) A third party appeal was submitted by RW Nowlan & Associates on behalf of Anne-Marie Fuller and Patrick Falvey and the Castlecountess and Castle Demesne Residents Association. The issues raised are as follows;

- In relation to the proposed density of 46 units per hectare this is stated as in excess of what is considered appropriate in the County Development Plan. The appeal refers to the section of the Kerry County Development Plan which states, *“County Kerry is a rural county and it is felt that imposing high densities more appropriate to large cities is not in keeping with the large urban*

areas. Therefore a general standard of 10-12 dwellings per hectare is usually acceptable.”

- The appeal raises concern at the potential traffic impact the proposed development would have. The application includes a Traffic and Transport Assessment Report. The report concludes that the traffic effects of the proposed development would not be significant.
- This conclusion relates to the impact of the proposed traffic movements on the junction between Princes Street and Castlecountess. This junction is a ‘stop controlled priority junction’ which is located 300m to the west.
- There is another junction located 50m from the site boundary, this is a T-junction between the main Castlecountess cul de sac road which runs in an east-west direction and ends at the entrance to the secondary school. The cul-de sac road provides access to four houses on Castlecountess. It is described in the Traffic and Transport Assessment Report as ‘a circa 40 metres long cul de sac road on its north side’. It is stated that the impact of the proposed development on this junction were not considered in the Traffic and Transport Assessment Report.
- It is submitted that the proposed development of 23 no. dwelling units will have a significant impact on the operation of the junction. Concern is expressed at the proximity of the secondary school from the site and potential conflict between traffic to the proposed development and the school.
- In relation to the height of the proposed development it is stated that the existing development on the adjoining land is bungalows. The proposed four storey apartment building would be located 10m from the nearest house on the adjoining site to the west no. 6 Castle Demesne.
- It is stated that while the proposed ridge height of the proposed apartment building is 18.7m it is circa 7.2m above the ridge level of the ridge of the neighbouring dwelling no. 6 Castle Demesne. The proposed ridge height of the proposed apartment building is circa 7.9m above the level of the ridge of the bungalow opposite, no. 16 Castle Demesne. The proposed apartment building is situated 17m in front of the building line of the houses on Castle

Demesne. A blank wall would face the front garden of the dwelling no. 6 Castle Demesne.

- The site is located in the southern edge of Tralee town centre, close to the N68 National Secondary Road which functions as a bypass of the town. Notwithstanding the proximity of the Town Park, the site is located in a suburban/edge location as per the Planning Guidelines on Building Height. In such locations it is stated that"4 storeys or more can be accommodated alongside existing larger, buildings, trees and parkland, river/sea frontage or along wide streets". While the northern and eastern boundaries of the site adjoin parkland and larger buildings, the western boundary adjoins an established residential area of low density and low rise bungalows. The appellants submit that the presence of these bungalow have not been taken into account sufficiently in determining an appropriate building height for the proposed apartment building.
- Concern is expressed in relation to the future use of the laneway which is located between the site and the existing houses. The matter of antisocial behaviour and dumping on the laneway is raised and concern is expressed that
- It is noted that no Construction Management Plan was submitted with the application. It is requested that in the event of a grant of planning permission that a condition be attached requiring that the applicant shall submit a detailed Construction Management Plan for the approval of the Planning Authority prior to commencement of development.
- The matter of the existing large sycamore tree located in the centre of the site is raised. It is proposed to remove it as part of the development. It is noted that it is recommended in the tree survey report that all three sycamore trees on the site are retained.
- The Board is respectfully requested to overturn the decision of the Planning Authority and refuse permission or alternatively reduce the scale of the development by condition.

(2) A third party appeal was submitted by Michael Horgan. The issues raised are as follows;

- It is submitted that the proposed development by reason of its height and mass would constitute overdevelopment of the site. It is considered that the site is restricted and that the proposed development would depreciate the value of property in the area.
- The matter of whether the applicant Nailun Limited own the full area of the site is raised.

6.2. First party appeal

6.2.1. A first party appeal was submitted by Hughes Planning and Development Consultants.

- The appeal is made against condition no. 7 which states;

7 (a) Prior to the commencement of any house or duplex in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice of supply of housing, including affordable housing, in the common good.

- It is submitted that no justification or apparent regard has been illustrated in relation to the need to apply condition no. 7. It is stated that the application of the condition will directly compromise the viability of the development permitted under Reg. Ref. 21/113 and that it will act as a negative precedent for further residential development within the wider town.
- The appeal refers to the document “Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities, published in May 2021. The following section is quoted “Planning Authorities and An Bord Pleanála shall, on granting planning permission for new residential development that is not specified as being ‘built-to-rent’ purposes at planning application stage, have regard to the need to apply the following planning conditions, further to Section 39(2) and 47 of the Planning and Development Act 2000 (as amended) in respect of all housing developments that include 5 or more houses and/or duplex units.’

- It is requested that the Board have regard to a number of factors which in cumulative terms illustrate that the attachment of condition no. 7 would compromise the viability of the subject residential scheme and would act as a significant disincentive and deterrent for other developers to propose residential development in Tralee and other towns in Co. Kerry.
- The applicant Nailum Limited has a development and phasing strategy for the site. The strategy was to build and sell the houses first and sell to individual purchasers. The finances raised from the sale of the houses would then be used to construct the apartments which would be retained and offered for rent on the private rental market.
- It is stated that the proposed scheme was designed and lodged prior to the publication of the Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities, published in May 2021. If the condition is upheld it would have implications for the financial viability of the scheme.
- It is submitted that condition no. 7 would directly compromise the provision of residential dwellings for the private rental market. It is stated that there is a lack of availability of properties for general private rental in Tralee. It is cited that a recent report for Daft.ie indicated that in Munster on August 1st 2021 that there were 281 homes available to rent. It was also highlighted that on research from Rent.ie taken on September 7th 2021 that there were 19 no. properties available in Tralee to rent. It is submitted that the proposal will allow for the provision of new rental properties into a market with limited availability.
- It is stated that condition no. 7 could encourage the vacancy of the 9 no. residential dwellings and this give rises to issues concerning maintenance and

management of the properties in relation to prevent theft, past control and damp issues.

- It is highlighted that the site contains a derelict building and that the proposed scheme provides an opportunity to ensure the delivery of residential accommodation.
- It is requested that the Board removed condition no. 7 from the grant of permission in respect of Reg. Ref. 21/113.
- It is stated that should the wording of condition no. 7 be retained as part of a grant of permission that it could potentially result in the involuntary vacancy of 9 no. residential houses for a minimum of two years.

6.3. Applicant Response

6.3.1. A response to the appeal submitted by Michael Horgan was submitted by Hughes Planning & Development Consultants on behalf of the applicant Nailun Limited. The issues raised are as follows;

- In relation to the height and massing of the proposed development it is stated that the proposed development has been designed having regard to the existing surrounding environment with the two-storey dwellings proposed to the southern and eastern boundary and the proposed four storey apartment building proposed to the north side of the site overlooking Tralee Town Park.
- The western and eastern elevations of the apartment block have been carefully designed to ensure no overlooking with high level windows proposed to these elevations.
- The proposed development of 23 no. residential units provides a density of 46 units per hectare. This is considered appropriate given the location of the lands within close proximity of the town centre.

- The proposed development is in accordance with national, regional and local planning policy which seek to increase building heights and densities within built up town centre locations.
- It is noted that the site is located in close proximity to a range of amenities and facilities including shops and services, in the town centre, aquadome and the Rose Hotel. The proximity of another three-storey development at Fels Point Apartments is also noted it is located circa 88m to the south.
- It is stated that the proposed development is in accordance with the 'Urban Development and Building Heights, Guidelines for Planning Authorities', which set out national planning policy guidelines on building heights in relation to urban areas.
- It is strongly refuted that the proposed height and mass of the development would constitute over development on a restricted site.
- The appeal referred to the matter of the ownership of the site and states that a section of the proposed site is not owned by Nailun Limited. In response to the matter it is stated that an enclosed land registry document demonstrates that the lands subject to the application are in the ownership of Nailun Limited.

6.3.2. A response to the appeal submitted by Anne-Marie Fuller and others was submitted by Hughes Planning & Development Consultants on behalf of the applicant Nailun Limited. The issues raised are as follows;

- In relation to the matter of density it is highlighted that the site is zoned 'R2' 'Existing Residential' under the provisions of the Tralee Town Development Plan 2009-2015(as varied and extended). Accordingly, residential development is a use class which is permitted under this zoning.
- Section 11.3 of the Plan refers to Developed and Built Up Areas, it states, 'It is important to recognise that this is part of the cycle of development or redevelopment in settlement that contributes to the character of the town. In many ways, this is more suitable than continually encouraging growth to concentrate towards undeveloped areas.'
- Therefore, there is a presumption in favour of development within existing built-up areas. It is strongly contended that the proposed development would

represent the more efficient use of zoned lands within an existing built up area.

- It is submitted that the proposed development is in accordance with the following objectives in the Tralee Town Development Plan. HP013 - facilitate the development of 1,142 residential units within the boundary. HP021- Ensure that future residential development is only permitted on appropriate zoned land within the town boundary in accordance with the core strategy to ensure a sustainable and compact urban form. HP023 – 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 town.
- It is stated in the appeal that the proposed density of 46 no. units per hectare is excessive having regard to the provision of the Kerry County Development Plan.
- It is stipulated in the Kerry County Development Plan 2015-2021 that each application will be looked at on its own merits and ‘higher density levels may be applicable to certain urban areas.’ The first party submit that the proposal does not provide for an overly dense scheme.
- Objective HP022 of the Tralee Town Development Plan 2009-2015 (as amended and varied) seeks to ensure that densities reflect the density of appropriate adjoining developments. Higher densities will be considered in the town centre or within close proximity to the town centre.
- The proposed density of 46 units per hectare is considered appropriate given the location of the lands within the town centre boundary of Tralee and its location immediately adjoining Tralee Town Park with pedestrian access to the town centre.
- It is noted that the Tralee Municipal District Local Area Plan comprises similar policies and objectives to the Tralee Town Development Plan including encouraging the development of infill sites within the existing boundary with the LAP requiring at least 30% of new housing to be delivered within existing built-up town boundary of Tralee.

- Reference is also made to the document 'Sustainable Residential Development in Urban Areas' (2009). Section 5.9(i) refers to infill development it states, "potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residential sites or sites assembled from a multiplicity of ownership. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings the protection of established character and the need to provide residential infill."
- It is submitted that the proposed development makes efficient use of infill land within a central location in proximity to Tralee Town Centre. It is submitted that the development is a high quality designed scheme.
- It is recommended in the guidelines that increased densities should be promoted within 500m walking distance of a bus stop. It is noted that the site is located within 1.5km of Tralee Bus and Train Station and that there are a number of bus stops along Prince's Street approximately 450m to the west of the site.
- In response to the matter of traffic impact it is stated that the proposed development was thoroughly examined in relation to traffic considerations by the Traffic and Transportation department of Malachy Walsh and Partners Engineering and Environmental Consultants.
- A Traffic and Transport Assessment (TTA) was submitted with the application.
- In relation to the existing roads serving the site, it is stated that the site is located on the eastern end of Castlecountess within a 30km/h area. Castlecountess is a cul de sac with circa 56 dwellings located within Castlecountess and Castle Demesne. There is a security barrier controlled across at the eastern end of the road which provides access for staff of CBS School. It is noted that Castlecountess includes on-street parking restrictions, and it has no through vehicular traffic.
- It is highlighted that CBS school vehicle access for public set-down, collection, vehicle turning is from a one-way internal access road located on the eastern side of the school and accessed off Dan Spring Road. It is stated that the

matter of unauthorised access to the school via the security controlled barrier is not a basis for objection.

- It is suggested in the appeal that there is an under provision of car parking and that the bicycle storage facilities are poorly designed. The first party refute these suggestions. A total of 32 no. car parking spaces are proposed comprising 16 no. spaces at basement level and 16 no. spaces at surface level. This provides approximately 1.39 space per unit.
- The appeal response refers to the provisions of 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) and in particular Section 4.21 which states, "In suburban/urban locations served by public transport or close to town centres of employment areas and particularly for housing scheme with more than 45 dwelling per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard."
- Having regard to the above it is submitted that the provision of 32 no. car parking spaces is more than adequate and is also in accordance with the required standards set out within the Tralee Town Development Plan 2009-2015 (as extended & varied).
- It is stated that the bicycle parking area proposed in the basement is designed in accordance with the requirements of the Apartment Guidelines. 28 no. bicycle spaces are proposed in the basement and 12 no. additional spaces are proposed at surface level.
- In relation to the matter of building height within the scheme, the issues discussed in the response are similar to those discussed by the first party in response to the appeal made by Michael Horgan as detailed under Section 6.3.1 of this report.
- In relation to the matter of the laneway the first party state that the laneway is located outside of the red line site boundary and its use is outside of the control of the applicant.

- While it is acknowledged that there may be ongoing anti-social behaviour occurring along the laneway it is considered that the development of the site from its present vacant state would bring it into active and beneficial use.
- The proposed landscaping and boundary treatment have been designed with safety and the protection of visual amenity in mind. It is proposed to retain as many hedges and boundary features as possible. Therefore, it is submitted that the proposed scheme will significantly enhance the existing public realm. It is proposed to reinstate an existing gateway on the western boundary of the site onto the laneway which will link the scheme with the town park.
- It is stated in the appeal that a detailed Construction Management Plan for the proposed scheme should have submitted with application. In response to the matter the first party state that all construction activities and construction traffic will be strictly managed in accordance with a construction management plan in order to mitigate any undue impacts to surrounding residents. It is noted that the matter can be addressed through the attachment of a condition should the Board issue a grant of permission.
- The appeal referred to the matter of daylight and sunlight being provided for the open space areas within the site. As part of the application process a Shadow Study was prepared by Ryan + Lambe Architecture and Project Management. Following the submission of the Shadow Study in response the further information request the Planning Authority did not have any further concerns in relation to the level of overshadowing which would be caused as a result of the proposed development. The first party submit that the proposed open space areas will receive sufficient sunlight and daylight throughout the year and that the scheme will provide a high level of amenity to incoming residents.
- The appeal raised concern regarding the large sycamore tree which is located in the centre of the site. The first party state that the landscaping proposals for the scheme seek to protect and maintain as many trees, hedges and boundary treatment as possible. The sycamore tree which is referred to in the appeal is a Category C tree. It is necessary to remove 3 no. trees on site. It is stated that the removal of these trees given their poor quality and limited

public amenity value will not have a negative impact on the landscape character of the site. Best practice construction methods will also ensure that there will be no negative impacts on the existing trees to be retained.

6.4. Planning Authority Response

Kerry County Council provided the following response to the first and third party appeals.

- The assessment of the application by the Planning Department of Kerry County Council is fully set out in the Planner's Report.
- The height and scale of the proposal are considered acceptable given the urban context of the site, proximity to the town park and town centre and the need to realise the full development potential of the site.
- The proposal was assessed by the Tralee Municipal District Department of Roads, Transportation & Marine and considered satisfactory, subject to conditions.
- Issues with regard to the laneway are outside the site boundary. The proposal would increase activity and passive surveillance in the vicinity of the laneway.
- A condition has been attached with regard to construction of the development. A construction management plan was not required as part of the application.
- In relation to the matter of ownership of the site Section 34(13) of the Planning and Development Act is noted.

7.0 Assessment

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

- Design, height and design
- Impact on residential amenity
- Access and traffic
- Other matters

- First party appeal
- Appropriate Assessment

7.1. Design, Height and Design

Density

- 7.1.1. The lands in question are zoned Objective - R2 Existing Residential. The proposal is to demolish the vacant building on site which was the former CBS Monastery and construct 23 no. residential units comprising 14 no. apartments and 9 no. dwellings. The site has an area of 0.5 hectares the proposed density would be equivalent to 46 units per hectare. The third party appeals contend that the proposed density is out of character with the surrounding area and excessive for the site. It was stated in the grounds of appeal that the proposed density would be contrary to the provisions of the Kerry County Development Plan 2015-2021. In response to the matter the first party stated that the proposal does not provide for an overly dense scheme. In relation to the provisions of the Kerry County Development Plan 2015-2021 in respect of density the first party noted section 13.2 of the Plan which refers to Standards for Residential Development in Urban Areas. In relation to density, it states that which states that 'each application will be looked at on its own merits and 'higher density levels may be applicable to certain urban areas.'
- 7.1.2. The first party in their response to the appeals also cited Objective HP022 of the Tralee Town Development Plan 2009-2015 (as amended and varied) which refers to density. Objective HP022 seeks to ensure that densities reflect the density of appropriate adjoining developments. Higher densities will be considered in the town centre or within close proximity to the town centre.
- 7.1.3. The first party response notes the provisions of Section 5.9(i) of Guidelines for Planning Authorities on 'Sustainable Residential Development in Urban Areas' (2009) which refers to infill development and states that potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residential sites or sites assembled from a multiplicity of ownership. It is advised that in residential areas whose character is established by their density or architectural form that a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings the protection of established character

and the need to provide residential infill. The response from the first party states that it is recommended in the guidelines that increased densities should be promoted within 500m walking distance of a bus stop.

- 7.1.4. The site is situated circa 450m to the south of Tralee town centre and it is within 1.5km of Tralee Bus and Train Station. There are a number of bus stops along Prince's Street approximately 450m to the west of the site. Furthermore, I note the proximity of Tralee Town Park to the site and that fact that it provides pedestrian/cycle access to the town centre. The first party submit that the proposed development will make efficient use of this infill site with a vacant property which is in a central location in proximity to Tralee Town Centre.
- 7.1.5. Accordingly, having regard to the proximity of the site to the town centre and its location immediately adjoining Tralee Town Park with pedestrian access to the town centre. I consider that the proposed density of 46 units per hectare is appropriate and in accordance with the provisions of the Tralee Town Development Plan 2009-2015 (as amended and varied) and the Kerry County Development Plan 2015-2021.
- 7.1.6. Building height
- 7.1.7. The matter of the proposed building height has been raised in the grounds of appeal in both of the third party appeals.
- 7.1.8. The proposed scheme comprises 23 residential units. This contains 9 no. two-storey semi-detached and terraced dwellings which are proposed to the southern and eastern side of the site. A four-storey apartment building is proposed to the northern end of the site. The apartment building has been designed with the fourth-storey setback from 4m from the front of the building and 3m from the eastern and western sides of the building. I consider this design feature reduces the visual impact of the four-storey nature of the building.
- 7.1.9. The first party in their response to the appeals state that the proposed development is in accordance with the 'Urban Development and Building Heights, Guidelines for Planning Authorities', which set out national planning policy guidelines on building heights in relation to urban areas. The Guidelines encourages the densification of built up areas and consolidation of urban areas with a focus on building upwards rather than building outward. The development of a four storey apartment building located in an outer town centre site is such as the appeal which located circa 450m

from Tralee Town Centre would be in accordance with the provisions of the guidelines which recommend that newer housing developments outside town centres be a mix of 2-3 storey town-houses, 3-4 storey duplexes and apartments of four storeys upwards which would deliver medium densities, in the range of 35-50 dwellings per hectare net.

7.1.10. The appeals refer to the character of the surrounding residential development including the bungalows located to the west of the site in Castle Demesne. The dwellings within Castle Countess to the south of the site are two-storey. A Photomontage Study of the proposed development was prepared by Ryan + Lambe Architecture and Project Management and submitted as part of the further information response.

7.1.11. Views towards the site have been provided from six vantage points to the north, south-east, south and west of the site. The first party submit that these verified view montages indicate that the proposed development will not have an overbearing appearance when viewed from the surrounding area and neighbouring dwellings. Having inspected the site and surrounding area and reviewed the submitted verified view montages I am satisfied that the proposed new building would assimilate well into the streetscape and would not appear overbearing or out of character.

Loss of Daylight/Sunlight

7.1.12. The provisions of BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) are relevant in the assessment of this development. Neither document is specifically referenced in the Tralee Town Development Plan 2009 – 2015 (as extended and varied) or the Kerry County Development Plan 2015-2021. The Section 28 Ministerial Guidelines on Urban Development and Building Heights 2018 refer to both BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011). While I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 ‘Daylight in buildings’), which replaced the 2008 BS in May 2019 (in the UK), I am satisfied that this document/UK updated guidance does not have a

material bearing on the outcome of the assessment and that the more relevant guidance documents remain those referenced in the Urban Development & Building Heights Guidelines.

7.1.13. No Sunlight Analysis was submitted as part of the planning documentation by the applicants. The proposed development consists of a mix of residential units including 9 no. two-storey semi-detached and terrace dwellings and 14 no. apartments. In relation to the proposed dwellings these units are dual aspect and therefore the BRE209/BS2806 targets would generally be met. In relation to the proposed apartments, 8 no. apartments are dual aspect with floor to ceiling heights of 2.75m. There is nothing apparent in the documents and drawings submitted that would highlight any issue here. Therefore, while there is no documentary evidence to demonstrate compliance with BRE209 requirements, based on the planning documentation submitted, I am satisfied that this is not a material or likely potential impact/deficit in information.

7.2. Impact upon residential amenity

7.2.1. In relation to the siting and design of the proposed apartment building, I note that it would be set forward from the front building line of the closest dwelling no. 6 Castle Demesne and that high level and opaque glazing is proposed to windows to the western elevation. Accordingly, having regard to the siting of the building relative to this dwelling and the proposed fenestration design, I am satisfied that it would not result in any undue new overlooking. The proposed apartment building would be setback 20m from the corner of the closest dwelling to the south, no. 16 Castle Demesne. Having regard to the siting of the proposed apartment building relative to this dwelling with no. 16 Castle Demesne located to the south-west of the site, there would be no direct overlooking of this property from the proposed apartment building.

7.2.2. In relation to the neighbouring dwelling at Castle Countess located immediately to the south of the appeal site, the two-storey dwellings are proposed to the southern end of the appeal site. I note that a separation distance of 16m is provided from the rear of the closest dwelling within the scheme and the side of this neighbouring. Accordingly, having regard to the separation distance provided I am satisfied that there would be no undue overlooking.

- 7.2.3. In relation to the issue of potential overshadowing, A Shadow Study have been prepared by Ryan + Lambe Architecture and Project Management submitted as part of the application, having regard to the siting and design of the proposed apartment building specifically the separation distance between the building and the closest dwelling to the west I am satisfied that there would be no undue shadowing onto this dwelling.
- 7.2.4. Regarding the issue potential overbearing impact from the proposed apartment building, having regard to the siting and design of the apartment building including the stepping back of the fourth floor of the building, I do not consider that it would have any undue overbearing impact upon the neighbouring dwellings to the west.
- 7.2.5. Accordingly, having reviewed the proposed site layout of the scheme relative to the existing surrounding properties, I consider having regard to the proposed siting of the and design of the proposed apartment building and dwellings within the scheme and the relative separation distances to the existing dwellings to the west and south of the site that the proposed scheme would not result in any undue overlooking, overshadowing or overbearing impact of neighbouring residential properties.

7.3. **Access and traffic**

- 7.3.1. The proposal entails the provision of a total of 23 no. dwelling units. Vehicular access is proposed onto the cul de sac off the estate road serving Castlecountess at the location of the existing entrance to the former CBS monastery building.
- 7.3.2. The grounds of appeal have raised concern regarding the additional vehicular traffic the scheme would generate and the impact it would have on the existing roads. Concerns is specifically expressed regarding the proximity of the CBS school to the east of the site and traffic conflicts arising from traffic generated by the school and the proposed development. The first party response to the appeal addressed the existing road layout and conditions and the access arrangements to the CBS school.
- 7.3.3. In relation to the existing roads serving the site, the site is located on the eastern end of Castlecountess within a 30km/h area. Castlecountess is a cul de sac with circa 56 no. dwellings located within Castlecountess and Castle Demesne. There is a security barrier controlled across at the eastern end of the road which provides access for

staff of CBS School. It is noted that Castlecountess includes on-street parking restrictions, and it has no through vehicular traffic.

- 7.3.4. CBS school vehicle access for public set-down, collection, vehicle turning is from a one-way internal access road located on the eastern side of the school and accessed off Dan Spring Road. The first party therefore contend that access to school is limited from Castlecountess due the existing security controlled barrier and therefore that the matter of traffic generated by unauthorised access to the school from Castlecountess via the security controlled barrier is not a basis for objection. I would concur with the first party in relation to this matter.
- 7.3.5. A Traffic Transportation Assessment (TTA) was submitted with the application. The TTA was prepared by Malachy Walsh and Partners Engineering and Environmental Consultants. In relation to the matter of trip generation it was projected that the proposed development would generate a total of 18 no. two-way vehicle trips during the peak hour. The daily vehicular trips per day were projected as 61 no. trips inbound and 61 no. trips outbound.
- 7.3.6. It is stated in the TTA that the proposed development would increase two-way peak hour traffic volumes by up to 18 no. vehicles on Castlecountess and by up to 11 no. vehicles on Prince's Street. In relation to capacity of the junction between Prince's Street and Castlecountess to accommodate the additional traffic which would be generated, the PICADY results indicated that the junction would operate well within practical capacity without significant traffic queueing and delays during the peak hours in the years 2022, 2027 and 2037. Accordingly, having regard to the details provided in the TTA it is reasonable to conclude that the relatively modest level of traffic arising from the proposed development will not give rise to any significant impact upon the existing road network and junctions in the vicinity of the site.
- 7.3.7. Furthermore, in respect of the proposed vehicular access arrangements, I note that the Planning Authority in their assessment of the scheme were generally satisfied.
- 7.3.8. The car parking arrangements to serve the scheme comprise a total of 32 no. car parking spaces. 16 no. spaces are proposed at basement level and 16 no. spaces are proposed at surface level. Accordingly, the car parking provision equates to approximately 1.39 spaces per unit. Car parking standards are set out under Table 15 of the Tralee Town Development Plan 2009-2015(As extended and varied). The

site is located within Location B as illustrated on Map 2(B) of the Tralee Town Plan. It is required that in Location B (Outer Town Centre) that 1.25 car parking spaces per unit are provided. Therefore, a minimum of 28.75 spaces would be required to serve the scheme. Therefore, the proposed car parking is in accordance with this Town Plan requirement.

- 7.3.9. In relation to bicycle parking it is proposed to provide 28 no. spaces in the basement with a further 12 no. spaces at surface level. Section 12.31 of the Tralee Town Plan requires that Cycle stands are required for all developments at one fifth the rate of required car parking spaces for the development in the B and C locations. The proposed bicycle parking with a total of 40 no. spaces is well in excess of this requirement in the Town Plan. The applicant has confirmed that the bicycle parking will be designed in accordance with the requirements of the Apartment Guidelines.
- 7.3.10. In conclusion, I am satisfied with the proposed car parking provision, bicycle parking provision and vehicular and pedestrian access arrangements.

7.4. Other issues

Ownership of the site

- 7.4.1. The matter of the ownership of the site was raised in the grounds of appeal. The response from the first party on the matter confirms that Nailun Limited own the subject site. Documentation from the land registry was submitted with the appeal response which demonstrates that the lands subject to the application are in the ownership of Nailun Limited.

Construction Management Plan

- 7.4.2. Grounds of appeal have raised the matter of the requirement for a construction Management Plan and stated that one should have been submitted with the application. The response from the first party has confirmed that all construction activities and construction traffic will be strictly managed in accordance with a construction management plan in order to mitigate any undue impacts to surrounding residents. Accordingly, I would recommend the attachment of a condition requiring that a Construction Management Plan shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Laneway

- 7.4.3. The grounds of appeal raised the matter of the pedestrian laneway adjoining the site to the west. Concern was expressed regarding antisocial behaviour and littering on the laneway. The laneway is located outside the site. I noted on inspection of the site that it was in regular use to access Tralee Town Park to the north. The first party stated in the appeal response that they it is acknowledged that there may be ongoing anti-social behaviour occurring along the laneway. They consider that the redevelopment of the site from its current vacant condition would bring it into active and beneficial use. The proposed scheme includes landscaping and boundary treatment which has been designed having regard to safety considerations and also to the protection of visual amenity. The first party noted in their response as part of the scheme it is proposed to reinstate an existing gateway on the western boundary of the site onto the laneway which will link the scheme with the town park. I considered that the provision of this pedestrian access between the scheme and the laneway will both provide permeability and connectivity and also increase the usage of the laneway which would provide more passive surveillance and therefore improve safety.

Landscaping and sycamore tree

- 7.4.4. The matter of the existing sycamore tree located at the centre of the site has been raised in the grounds of appeal. The third party expressed concern that it be required to remove it. In response to the matter the first party state that the landscaping proposals for the scheme seek to protect and maintain as many trees, hedges and boundary treatment as possible. The Landscape Design Context Plan (Drawing No: 1000) illustrates that it is proposed to remove the sycamore tree located at the centre of the site. This tree is classified as a Category C tree. The first party confirm in their response that it is necessary to remove 3 no. trees on site to facilitate the proposed development and they stated that the removal of these trees given their poor quality and limited public amenity value will not have a negative impact on the landscape character of the site. I note that it is also proposed to remove a beech tree and another sycamore tree located adjacent to the northern site boundary. The Beech tree is a Category U tree and the sycamore tree to the northern boundary is classified as a Category C tree. While the proposed development necessitates the removal of these three existing trees, I note that it is proposed to retain a number of

other mature trees located to the north-eastern and north-western corner of the site. The first party has confirmed that best practice construction methods will be employed to ensure that there will be no negative impacts on the existing trees to be retained.

7.5. First party appeal

7.5.1. A first party appeal has been made against condition no. 7 of the permission granted by the Planning Authority under Reg. Ref. 21/113.

7.5.2. Condition no. 7 states;

(a) Prior to the commencement of any house or duplex in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: *To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice of supply of housing, including affordable housing, in the common good.*

- 7.5.3. The first party request that the Board remove this condition on the basis that the condition is considered unjustified and that it would negatively impact the viability of the permitted development on the site. It is noted in the appeal that the wording of the condition is similar to the wording set out in the document “Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities,” published in May 2021.
- 7.5.4. The appeal cites the following section of the document which states, “Planning Authorities and An Bord Pleanála shall, on granting planning permission for new residential development that is not specified as being ‘built-to-rent’ purposes at planning application stage, have regard to the need to apply the following planning conditions, further to Section 39(2) and 47 of the Planning and Development Act 2000 (as amended) in respect of all housing developments that include 5 or more houses and/or duplex units.”
- 7.5.5. It is argued that there a number of issues which should be taken into consideration in assessing the matter. It is submitted that the condition would compromise the viability of the residential of the site and that it would act as a significant disincentive and deterrent for other developers to propose residential development in Tralee and other towns in Co. Kerry. It is set out in the appeal that the applicant’s strategy for the scheme in terms of phasing and development was to first build and sell the houses to individual purchasers. The applicant then intends to use the finances raised from the sale of the houses to construct the apartments within the scheme. The applicant intends to retain the ownership of the apartments and that they would be offered for rent on the private rental market.
- 7.5.6. The appeal refers to the current situation in Tralee and in Munster in respect of the availability of rental properties. It is set out in the appeal that there is a lack of available rental properties. The appeal cites a recent report for Daft.ie which stated that in Munster on August 1st 2021 that there were 281 homes available to rent. In relation to Tralee, it was also highlighted that on research from Rent.ie taken on September 7th 2021 that there were 19 no. properties available in Tralee to rent. It is submitted that the proposal will allow for the provision of new rental properties into a market with limited availability. I note these figures for available rental properties, however, I would also note that the applicant states that it is intended to provide the apartments within the scheme for rent when they are built. Therefore, I would note

that the scheme would be providing housing units for rent to increase the rental availability within Tralee.

- 7.5.7. The appeal also states that the proposed development of the site containing a derelict building will improve the area and provides an opportunity to ensure the delivery of residential accommodation. It is argued in the appeal that if the condition is attached to the permission that it could encourage the vacancy of the 9 no. residential dwellings and that the potential vacancy of the units would give rises to issues concerning maintenance and management of the properties in relation to prevent theft, past control and damp issues. It is highlighted that the site contains a derelict building and that the proposed scheme provides an opportunity to ensure the delivery of residential accommodation. I note these matters raised by the applicant, however I do not consider they provide a reasonable basis to omit this condition and particularly when the applicant has stated in the appeal that it is intended to sell the houses to individual purchasers.
- 7.5.8. In relation to provisions of the document “Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities,” published in May 2021, I note that as set out on page 1 of the Guidelines that “the purpose of these guidelines is to set out planning conditions to which planning authorities and An Bord Pleanála must have regard, in granting planning permission for new residential development including houses and/or duplex units.” The Guidelines further state that “this is intended to ensure that own-door housing units and duplex units in lower density housing developments are not bulk-purchased for market rental purposes by commercial institutional investors in a manner that causes the displacement of individual purchasers and/or social and affordable housing including cost rental housing.’
- 7.5.9. The appeal from the first party states that it is intended to sell the houses on site to individual purchasers to fund the development of the apartments and that it is intended to build the apartments and for the applicant to retain ownership of them and then rent them. Firstly, I note that the applicant confirms that they intend to sell the houses to individual purchasers then it is proposed to develop the apartments to be held in their ownership. Secondly, I note that the applicant states that they propose to rent the apartments within the scheme which will be held in the applicant’s ownership. Therefore, without the attachment of condition no. 7 then it

would be feasible that all the units within the scheme would only be provided for rental. Accordingly in order to ensure that there is a mix of tenure provided with the scheme, I consider that it is entirely appropriate in this context to attach condition no. 7 in order to ensure that those units are not bulk purchased for market rental given that it is proposed to develop the apartments within the scheme for rental.

7.6. Appropriate Assessment

Stage 1 Screening

- 7.6.1. The proposed development would not be located within an area covered by any European site designations and the works are not relevant to the maintenance of any such sites. The European site Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site No. 002070) is located 1.1km to the west of the development site. Tralee Bay Complex SPA (Site No. 004188) is located 1km to the west of the development site.
- 7.6.2. The qualifying interests/special conservation interests of the designated sites, are summarised as follows:

Tralee Bay and Magharees Peninsula West to Cloghane SAC	Tralee Bay Complex SPA
Estuaries [1130]	Whooper Swan (<i>Cygnus cygnus</i>) [A038]
Mudflats and sandflats not covered by seawater at low tide [1140]	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]
Coastal lagoons [1150]	Shelduck (<i>Tadorna tadorna</i>) [A048]
Large shallow inlets and bays [1160]	Wigeon (<i>Anas penelope</i>) [A050]
Reefs [1170]	Teal (<i>Anas crecca</i>) [A052]
Annual vegetation of drift lines [1210]	Mallard (<i>Anas platyrhynchos</i>) [A053]
Perennial vegetation of stony banks [1220]	Pintail (<i>Anas acuta</i>) [A054]
Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]	Scaup (<i>Aythya marila</i>) [A062]
Salicornia and other annuals colonising mud and sand [1310]	Oystercatcher (<i>Haematopus ostralegus</i>) [A130]
	Ringed Plover (<i>Charadrius hiaticula</i>) [A137]
	Golden Plover (<i>Pluvialis apricaria</i>) [A140]
	Grey Plover (<i>Pluvialis squatarola</i>) [A141]

Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]	Lapwing (<i>Vanellus vanellus</i>) [A142]
Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]	Sanderling (<i>Calidris alba</i>) [A144]
Embryonic shifting dunes [2110]	Dunlin (<i>Calidris alpina</i>) [A149]
Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]	Black-tailed Godwit (<i>Limosa limosa</i>) [A156]
Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]	Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]
Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) [2170]	Curlew (<i>Numenius arquata</i>) [A160]
Humid dune slacks [2190]	Redshank (<i>Tringa totanus</i>) [A162]
<i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]	Turnstone (<i>Arenaria interpres</i>) [A169]
Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>) [91E0]	Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]
<i>Lutra lutra</i> (Otter) [1355]	Common Gull (<i>Larus canus</i>) [A182]
<i>Petalophyllum ralfsii</i> (Petalwort) [1395]	Wetland and Waterbirds [A999]

- 7.6.3. The Conservation Objectives for Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site No. 002070) are to maintain/restore the favourable condition of the qualifying habitats and species.
- 7.6.4. The Conservation Objectives for Tralee Bay Complex SPA (Site No. 004188) are to maintain/restore the favourable condition of the qualifying species as defined by a list of attributes and targets.
- 7.6.5. The subject site is an infill site. The proposed attenuation measures would reduce variations in the runoff from the site. There is no potential, therefore, for the proposed development to alter the volume or characteristics of the flows into or from the surface water sewerage system that could conceivably have a significant effect on any Natura 2000 site. The foul effluent from the proposed development would drain to the wastewater treatment system for Tralee. The scale of the proposed

development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant effect on any Natura 2000 site.

- 7.6.6. In relation to potential in cumulative/in-combination, no such impacts between the proposed development and other plans or projects are envisaged.
- 7.6.7. Having regard to the site's location in an urban area, the nature and scale of the works, the separation distance between the site and the SAC and the SPA and to the characteristics of the designated sites and the qualifying interests, it is considered that the proposed development would not be likely to have a significant effect on either of the designated sites.

AA Screening Conclusion

- 7.6.8. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Tralee Bay and Magharees Peninsula West to Cloghane Special Area of Conservation, European Site No. 002070, Tralee Bay Complex Special Protection Area European Site No. 004188, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. I recommend that planning permission is granted for the proposed development in accordance with the following reasons and considerations:

9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the Tralee Development Plan 2009-2015 (As extended and varied), and in particular the Objective HP022 of this Plan which provides for the consideration of increased residential densities within locations in close proximity to the town centre, and having regard to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out

below, the proposed development would not seriously injure the residential or visual amenities of the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 26th day of May 2021, 10th day of June 2021 and 28th day of July 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to the commencement of development, the developer shall enter into a water and/or wastewater connection agreement with Irish Water. This permission does not commit Wicklow County Council to the provision of water services to serve the proposed development.

Reason: In the interest of public health.

3. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to

Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets. Drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and of traffic and pedestrian safety.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

10. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

11. A minimum of 10% of all communal car parking spaces shall be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

12. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials [and for the ongoing operation of these facilities] [within each house plot] shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

13. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section

96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

14. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of streets, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part therefore to the satisfactory completion of any part of the development. The form and amount of security shall be as agreed between the planning authority and the developer, or in default of an agreement shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to

commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Siobhan Carroll
Planning Inspector

3rd March 2022