



An
Bord
Pleanála

Inspector's Report

ABP-314475-22

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| Development | Development of a Caravan Park with all associated and ancillary site works |
| Location | Dough, Kilkee, Co Clare |
| Planning Authority | Clare County Council |
| Planning Authority Reg. Ref. | 22563 |
| Applicant(s) | Gold Star Homes 3 Limited |
| Type of Application | Outline Permission |
| Planning Authority Decision | Refusal |
| Type of Appeal | First Party |
| Appellant(s) | Gold Star Homes 3 Limited |
| Observer(s) | Stephen Nugent Moinin Residents Association John Williams on behalf of Kilkee Tourism Ltd. Noel Kelleher Fiona O'Callaghan Catherine & Gerard O'Callaghan Brian Keane |

Geraldine O'Shea

Date of Site Inspection

14th of February 2023

Inspector

Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The site has a stated area of 1.33 ha and is located within the settlement boundary of Kilkee in West County Clare. The site is located to the southeast of Kilkee within its settlement boundary, c. 6-700m from Kilkee Bay/Beach, on a local road approximately 250m south of Circular Road. The local road is known as the Percy French Estate Road and serves the Moonin housing estate opposite the application site as well as a number of individual houses either side of the application site. Parts of the northern boundary of the site adjoin the Gurrane housing estate.
- 1.2. The site can be described as an underutilised and overgrown brownfield site with existing overhead transmission wires crossing the site, security fencing along the southern boundary and an existing high boundary wall to part of the northern site boundary. There appears to be an existing access track into the site and there is evidence of an invasive species on the site.
- 1.3. The road fronting the site southern boundary of the site can facilitate two-way traffic and a pedestrian path exists opposite the site with public lighting. The path does not directly connect back into Kilkee.

2.0 Proposed Development

- 2.1. The application is for Outline Permission comprising off-
 - the development of a Caravan Park
 - 45 individual serviced berths for caravans / mobile homes
 - site access from the southern boundary,
 - a 4.5m wide one way access road
 - connection to existing public waste and water supply services
 - relocation within the site of an existing foul pumping station
 - surface water drainage including 140 m³ attenuation tank
 - 2m high wall to east and west boundaries, 0.9m high wall to front of site and southern boundary,
 - landscaping and

- a single storey amenity block

2.2. The application is accompanied by the following documents-

- Appropriate Assessment Screening
- Engineering Infrastructure Report
- NRB Consulting Engineers- Traffic and Transportation Matters and
- Planning Supporting Statement

2.3. The Board are directed to Appendix A of the latter document in which a 'Legal Opinion' is provided by Mr. Davind Browne BL. This opinion is to advise the scope of what a planning authority is entitled to determine on receipt of an application for outline planning permission.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 19/08/22 for three reasons as follows-

1. *The road network that serves as the access to the site from Circular Road is deficient in terms of its capacity, its horizontal alignment, surfacing and pedestrian provision in order to accommodate the volume and composition of vehicular and pedestrian traffic associated with the development. In addition, the proposed layout and boundary treatments would restrict visibility at the proposed access points and the existing adjacent access points to the east and west of the site. The Planning Authority also considers that the proposed development is deficient in terms of onsite pedestrian provision, street lighting, traffic calming measures, and signage, and has not demonstrated that the proposed internal road layout can appropriately accommodate the turning movements associated with onsite vehicles. Therefore, the Planning Authority considers that the proposed development would endanger public safety by reason of a traffic hazard, would have an adverse impact on traffic safety and free flow on the public access road, would have adverse impacts on the safety of adjacent access points by reasons of restricted visibility,*

would not adequately facilitate safe and convenient movement of vehicles and pedestrians within the site and therefore would not be in accordance with the proper planning and sustainable development of the area.

- 2. The proposed development would be located on lands zoned for "Low Density Residential Development" where Site Specific Development Objective LDR1 applies as per the Clare County Development Plan 2017-2023 (as varied). The Planning Authority considers that the proposed development is not in accordance with the onsite objective as it does not constitute an appropriate consolidation of the structure of this residential area of Kilkee and does not achieve appropriate connectivity with existing uses and adjacent zoned lands. In addition, the Kilkee Settlement Plan includes a number sequentially preferable sites designated for "Tourism" which include Site Specific Development Objectives to encourage the development of caravan accommodation. Therefore, it is considered that the proposed development would not be in accordance with the planning policy or the proper planning and sustainable development of the area.*

- 3. With regard to the protection of the amenities of the area, having regard to the views available towards the site, the nature of the proposed development and the proximity of the site to existing dwellings and lands zoned for residential purposes, on the basis of the available information the Planning Authority considers that that the proposed development would constitute a visually incongruous feature in this residential area of Kilkee, would be an undesirable departure from the existing settlement pattern of the area, would have adverse impacts on adjacent amenities by reason of general disturbance, and therefore would not be in accordance with the proper planning and sustainable development of the area.*

4.0 Planning Authority Reports

4.1. Planning Reports

The Planners Report dated 04/11/22 reflects the decision of the Planning Authority. The following is noted from the report-

- The assessment has considered the 'Planning Support Statement submitted with the application and the 'legal opinion' as set out in Appendix A.
- The considerations that informed the refusal of the previous application (21/1343) on the site for 3 reasons were fundamental considerations in the assessment of the principle of the development.
- The site is zoned 'Low density Residential Development' and the land use as proposed "Will normally be Acceptable in Principle" on such lands.
- The proposal would not make any meaningful or tangible impact on housing issues in Kilkee.
- The proposal would not encroach onto the footprint of the West Clare Greenway and would provide permeability between the site and the route.
- The general objectives for Kilkee seek to facilitate the development of enhanced campervan facilities in Kilkee. The application does not provide campervans and would not contribute to the objective.
- The site has a site specific zoning LDR1- low residential development. The previous planning permission for residential development at the site indicates permeability with adjacent land was achieved.
- A Masterplan for the lands is submitted. Public vehicular and pedestrian access would not be appropriate through a caravan park and unlikely to be achievable through a private business operation.
- The proposal is not in keeping with existing settlement pattern of the area.
- There are sequentially preferable sites in Kikee zoned for such Tourism Development.

- The proposal would result in intervisibility with an existing caravan park leading to an over intensification of one type of land use in this area and would have adverse impacts on visual amenities and the character of the area.
- It is unclear how onsite activities are to be managed and supervised leading to potential for significant adverse impacts on existing residential amenity.
- The proposed relocation of the existing foul pumping station is close to an existing dwelling.
- The previously permitted residential development at this site included an improvement of the access road junction, road widening and footpath connectivity. This is not proposed within this application with vehicle movements considerably different.
- A Road Safety Audit, Traffic Impact Assessment or traffic modelling have not been submitted. The application does not demonstrate that access roads have the capacity to deal with cumulative impacts of additional traffic from the proposal. The application should be refused on grounds of adverse impacts on traffic safety.
- The proposed boundary and on site planting would appear to restrict sight line availability from the entrance.
- Traffic implications for the adjacent road network are a material consideration.
- An auto track analysis of vehicular movements within the site has not been submitted. It is unclear if provisions of DMURS can be achieved.
- If permission is granted archaeological monitoring should be conditioned.
- The proposal constitutes a sub threshold EIA development. It is considered there are no real likelihood of significant effects on the environment and the need for EIA can be excluded at preliminary examination stage.
- Having regards to nature and scale of the proposal and the absence of proximity or connectivity to a European Site, no appropriate assessment issues arise and the development will not have a significant effect individually or in combination with other plans or projects.

4.2. Other Technical Reports

- Roads Design Office-
 - Special Contribution required for pedestrian crossing and a footpath, sightlines as per DMUS required, other road issues highlighted.
- West Clare Municipal District
 - 28/07/2022- Invasive Species identified at site, eradication plan required, in the absence of an assessment of the traffic generated on the existing road network and the need for a Road Safety Audit the application is considered premature and should be refused on traffic and road safety grounds.
- Housing Department-
 - Clarity provided in relation to a letter dated May 26th, 2022. No concerns raised.
- Chief Fire Officer-
 - Further information required.

4.3. Prescribed Bodies

- None received.

4.4. Third Party Observations

Twelve third party submissions have been received and can generally be summarised as follows-

- Previous refusal on site for similar development save for submission of a legal opinion.
- Nature of use and zoning, contrary to Development Plan policy. Tourism zoning more appropriate.
- Significant concentration of mobile homes exists in Kilkee.
- Shortage of Housing in Kilkee, impacts on future housing in the area.

- Visually incongruous development.
- Road and traffic concerns including pedestrian connectivity.
- Residential amenity concerns including structural integrity of neighbouring property and proposed boundary treatment.
- Existing and proposed wastewater treatment and related concerns
- Rerouting of overhead electrical wires.
- Invasive species on site
- Impact on public water supply
- Cumulative impacts with other uses in the area.
- Surface water drainage concerns

4.5. Representations

- Councillor Cillian Murphy 26/07/22 objecting to the proposal
- Councillor Ian Lynch 19/07/22 objecting to the proposal

5.0 Planning History

This Site-

- 21/1343- Outline permission **refused** for Caravan Park / Camp Site / Motor Home Park (Tourist uses) / Glamping Use etc on the 18/02/2022 for three reasons-
 - 1) Inadequate road network, reason of traffic hazard, impacts on traffic safety and free flow on public access road, restricted visibility etc.
 - 2) Contrary to onsite zoning objective for low density residential development, does not achieve adequate connectivity, not appropriate consolidation of this residential area of Kilkee. Proposal injurious to amenities of the area.
 - 3) A visually incongruous feature in this part of Kilkee, adverse impacts on adjacent amenities

This site and site opposite

- 12/276- **Grant** extension of duration for 06/115 on the 26/06/2012
- 06/115- **Grant** 64 residential units and two site entrances etc on the 01/05/2007

6.0 Policy Context

6.1. Legislation

6.1.1. Planning and Development Act 2000-23 as amended (PDA)-

Section 36-

- *(1) An application under section 34 may be made to a planning authority in accordance with the permission regulations for outline permission for the development of land.*
- *(2) Where outline permission is granted under section 34, that permission shall not operate to authorise the carrying out of any development to which the outline permission relates until a subsequent permission has been granted under that section.*
- *(3) (a) Where outline permission has been granted by a planning authority, any subsequent application for permission must be made not later than 3 years beginning on the date of the grant of outline permission, or such longer period, not exceeding 5 years, as may be specified by the planning authority.*
(b) The outline permission shall cease to have effect at the end of the period referred to in paragraph (a) unless the subsequent application for permission is made within that period.
(c) Sections 40, 41 and 42 shall not apply to the grant of an outline permission.
- *(4) Where an application for permission is made to a planning authority consequent on the grant of outline permission, the planning authority shall not refuse to grant permission on the basis of any matter which had been decided*

in the grant of outline permission, provided that the authority is satisfied that the proposed development is within the terms of the outline permission.

- *(5) No appeal may be brought to the Board under section 37 against a decision of a planning authority to grant permission consequent on the grant of outline permission in respect of any aspect of the proposed development which was decided in the grant of outline permission.*
- *(6) In this section, “outline permission” means permission granted in principle under section 34 for the development of land subject to a subsequent detailed application for permission under that section.*

6.1.2. Planning and Development Regulations 2001-23 as amended (PDR)-

- Article 22 deals with the Contents of Planning Applications
- Article 24 details ‘Plans and particulars to accompany application for outline permission’ and states-
 - *Notwithstanding article 22(2)(d), an outline application shall, in addition to the requirements of article 22(2), be accompanied only by such plans and particulars as are necessary to enable the planning authority to make a decision in relation to the siting, layout or other proposals for development in respect of which a decision is sought.*

6.2. **National Planning Framework (NPF)**

- National Policy Objective 22-
 - *Facilitate tourism development and in particular a National Greenways, Blueways and Peatways Strategy, which prioritises projects on the basis of achieving maximum impact and connectivity at national and regional level.*

6.3. **Ministerial Guidelines**

6.3.1. Design Manual for Urban Roads and Streets (DMURS 2013 & 2019)-

- Section 4.4.4 Forward Visibility
- Section 4.4.5 Visibility Splays

6.4. Clare County Development Plan (as varied) 2017-23 (CDP)

6.4.1. The site is governed by the policies and provisions contained in the Clare County Development Plan (CDP) 2017 to 2023 as varied.

6.4.2. Table 2.1 of the Plan sets out the Settlement Hierarchy for County Clare. Kilkee is identified as a 'Small Town' in the Clare County Council Development Plan and its West Clare Municipal District (Volume 3D) Pages 34-41. There are a number of 'General Objectives' for Kilkee on Page 35 including-

- *To make provision for the sustainable growth of Kilkee by providing for a permanent resident population through the allocation of land within the town for the appropriate provision of permanent private, social and affordable housing, employment, services and recreational/open space;*
- *To facilitate the development of enhanced camper van facilities in Kilkee.*

6.4.3. Page 39 deals specifically with 'Housing and Sustainable Communities'. It states-

Kilkee is home to approx 1000 persons many of whom can trace their families back for generations in the locality while others are more recent arrivals. The enduring appeal of Kilkee as a place to live is evident in the level of community activity. A significant issue is the vacancy level of 71%. Whilst unoccupied housing is to be expected in a tourist town, this level of vacancy needs to be addressed. During the lifetime of this Plan the focus shall be on the provision of housing for permanent occupancy on lands that are zoned for residential uses in the town of Kilkee. The following sites are identified for housing development¹:

LDR1 South Eastern Development Area, Dough

This is an area of flat, low-lying land located to the south of the town centre area in Kilkee. This site provides an opportunity for in-depth development that will help to consolidate the structure of this area. The site is bounded to the north by the line of the former West Clare Railway. The site covers a large area. If development proposals do not utilise the entirety of the lands, a masterplan must be prepared showing connectivity to future development

¹ Underlined emphasis added.

areas and an outline of the type of development that is proposed for the remainder of the site.

- 6.4.4. The site is identified within the 'Kilkee Settlement Plan'² map as LDR1 i.e. a 'site specific objective'.
- 6.4.5. Section 19.4 of Volume 1 of the CDP deals with 'Nature of Zoning' and '*describes the individual zonings proposed in each of the settlement plans/local area plans*'. For 'Low Density Residential' it states-
- *This zoning refers to the use of lands to accommodate a low density pattern of residential development, primarily detached family dwellings. The underlying priority shall be to ensure that the character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed developments must also be appropriate in scale and nature to the areas in which they are located.*
- 6.4.6. Section 19.5 deals with the 'Indicative Land-Use Zoning Matrix' which is set out in Appendix 2. 'Caravan Park/Camp Site/ Motor Home Park (Tourist uses) Glamping' is identified as a use that '*Will normally be acceptable in principle*'.
- 6.4.7. The following policies are relevant-
- *CDP2.1 Development Plan Objective: Appropriate Assessment, Strategic Environmental Assessment and Strategic Flood Risk Assessment*
 - *CDP6.26 Development Plan Objective: Tourism It is an objective of Clare County Council: To harness the economic potential of tourism throughout the County*
 - *CDP9.4 Development Plan Objective: Tourism Developments and Tourist Facilities It is an objective of the Development Plan:*
 - a. *To permit tourism-related developments and facilities inside existing settlements where the scale and size of the proposed development is appropriate and in keeping with the character of the settlement, subject to normal site suitability considerations;*
 - b.

² Page 215 of the West Clare Municipal District (Volume 3D)

- c. *Development proposals must be in compliance with Objective CDP2.1. The proposal should clearly identify the spatial extent of any tourism activities and should address the implications of increased recreational disturbance (both in isolation and in combination with other tourism activities) on any European sites as a result of increased tourism and recreation in the area/County, taking into account any current pressures on these sites.*
- *CDP9.5 Development Plan Objective: Tourist Accommodation It is an objective of the Development Plan:*
 - a. *To promote, encourage and facilitate the provision of new visitor accommodation and the expansion/upgrade of existing hotels, guesthouses, B&Bs and other tourist accommodation at appropriate locations throughout the County;*
 - b. *To support the redevelopment of brownfield sites, both in settlements and in rural areas, for the provision of tourist accommodation;*
 - c. *To support the development of new camping and glamping facilities and facilities for campervans/motor homes/touring caravans both within settlements and in rural locations across the County;*
 - d. *To ensure all proposals are in compliance with the requirements of Objective CDP2.1.*
- CDP9.6 Development Plan Objective: Wild Atlantic Way
- CDP9.25 Development Plan Objective: Tourism in West Clare

6.5. Natural Heritage Designations

The site is located-

- c. 600m southeast of the Kilkee Reefs SAC (002264) Special Area of Conservation
- c. 2km northwest of the Lower River Shannon (002165) Special Area of Conservation

- c. 3.3km northwest of the River Shannon and River Fergus Estuaries SPA (004077) Special Protection Areas

6.6. EIA Screening

6.6.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Class (10)(b)- *Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)*
- Class (12) (d) Tourism and Leisure- *Permanent camp sites and caravan sites where the number of pitches would be greater than 100.*

6.6.2. The site is not located within a 'business district' and is not within the 'built up area' as defined by the Regulations. In this regard the site has a stated area of 1.33 ha and is well below the applicable threshold of 20 ha for sites identifiable as 'elsewhere'.

6.6.3. This application is for outline permission for a Caravan Park with 45 individual serviced berths for caravans / mobile homes, a new entrance, a single storey amenity block and ancillary works etc. The proposal is well below the number of 'pitches' requiring mandatory EIA. I equate 'pitches' to 'berths' in this context.

6.6.4. The introduction of a caravan park will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as discussed in section 8.5) and there is no specific hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site/or other).

6.6.5. The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other housing and development in the vicinity. It would not give rise to a risk of major accidents or risks to human health.

The development would use the public water and drainage services of Irish Water and Clare County Council, upon which its effects would be marginal.

6.6.6. Having regard to

- the nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 and 12 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- the location of the site on zoned lands within the Kilkee Settlement Boundary under the provisions of the Clare CDP 2017-2023 as varied, and the results of the strategic environmental assessment of that plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site benefiting from public infrastructure and the existing pattern of development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

7.0 The Appeal

7.1. Grounds of Appeal

A first party appeal has been received. The grounds of appeal can be summarised as follows-

- The application site is the full extent of the ownership of lands by the applicant. The applicant has no control over the existing Moonin housing estate nor has it inherited obligations in this regard.
- An electrical substation and pumping foul water system that was intended to serve the Moonin housing estate and the development previously permitted at this site currently exists within the application lands. This is described as a temporary arrangement.
- The proposal incorporates a permanent foul water system for the proposal and Moonin estate.
- The refusal reasons are identical to the refusal reasons for 21/1343 save for some non-material changes to the wording of number 2 despite specific design amendments and substantial new and further information submitted with the current application.
- Serious concerns are raised in relation to the Planning Authority's (PA) approach to the assessment and consideration of the appeal. The PA have effectively assessed the application as a full permission which is a significant procedural error on their part.
- The Applicants have commissioned a 'Legal Opinion' on the scope of what a PA is entitled to determine on receipt of an application for outline. Specific reference is made to paragraph 25 of that 'Opinion' which accompanies the application.
- In a highlighted section of the PA Planners Report no reference is made to the fact the application is for outline permission. It is considered the PA have taken into account matters beyond the consideration of the principle of the proposed development. The reasons for refusal reveal reference to a range of

detailed considerations beyond the scope of an outline application. It is not accepted that issues such as street lighting are fundamental considerations.

- The application only seeks approval in relation to the principle of the use and the layout of the proposed development only. All other considerations details will be subject to an application for permission consequent. A decision should not be made on any other development management considerations which are not required at outline stage.
- Significant concerns are raised in relation to the assessments and the reasons for refusal including how the site should be reserved for housing development when other uses are permissible.
- The Council's 'Roads Design Office' offers no objection to the outline application. The West Clare Municipal District Report demonstrate as a lack of understanding of the 'Outline' process.
- Exact details for a new vehicular and pedestrian access will be provided as part of a future full application. Access from this road was previously granted for 62 units under 06/115. The principle has been established.
- Following the refusal under 21/1343 the applicants engaged NRB Consulting Engineers with the purpose of addressing the principle of access. It has assessed traffic/trip generation for the proposal using TRICS data. It confirms the proposal would be expected to generate 2 way hourly traffic flows of 13 cars during a one hour lunch time period and a total daily movement of 114 cars. It concludes the road has capacity for these expected trips. They consider required sightlines can easily be achieved and further matters can be addressed at permission consequent stage which will also include a Transport Impact Assessment and auto-tracking.
- It is considered the proposal can be provided safely and would not result in adverse impact on the local traffic capacity.
- In term of the second refusal reason the site is located within the settlement boundary and is zoned. A caravan park is permitted in principle and is confirmed in 21/355. There is no policy in the CDP prohibiting the development of caravan parks in Kilkee.

- There is no reason that public access through a caravan park cannot operate in the same way as through any residential estate. It is unclear why the internal roads cannot be taken in charge.
- The layout of the scheme provides connectivity on the northern boundary, the northwest corner and the eastern boundary with surrounding uses and adjacent sites should they come forward for development. A new footpath on the northern side of the LT-60771 local road will be provided thereby improving the overall pedestrian permeability of the area. The proposal ensures coordinated development can be achieved.
- In terms of other sites zoned for Tourism, there is no policy basis for applying a sequential approach to development on zoned lands particularly when the use is permissible in principle. The PA do not offer commentary on where alternative sites may be located or how they are more suitable. The PA do not acknowledge the assessment of alternative sites submitted with the application (Appendix D of appeal).
- The proposal seeks to bring a prime site into beneficial use and to meet tourism growth potential in West Clare. The proposal will also complete the development of the wider unfinished development i.e. 06/115 i.e. retain and incorporate the foul water system. The proposal is in line with CDP objectives 6.26, 9.25, 9.4 and 9.5.
- There is a recognised shortage of tourist accommodation in Kilkee resulting in a high vacancy in its residential stock with housing stock being used for tourist accommodation e.g. Airbnb or daft short term letting. Other users of tourist accommodation such as Ukrainian refugees are detailed.
- In terms of the third refusal reason it is unclear how visual impact is a material consideration of the principle of the development with the use being normally acceptable in principle.
- As the application is for outline permission no visual impact assessment has been undertaken and no details submitted.

- Careful consideration has been given to the layout, siting and screening of serviced berths to ensure it relates to the surrounding character but also to protect the amenity of existing neighbouring residents.
- The site is generally flat with full details of levels to be provided at permission consequent stage. Resulting levels will be in keeping with adjacent sites. An existing caravan park is located within 70 metres of the site. The character of the area is a mix of uses. It cannot be considered visually incongruous to the area.
- The site provides berths ensuring berths are generously sized and the scale of the development is not out of character with the area. The proposal represents less than 35 berths per hectare well below the 50 set out in Bord Failte requirements. The site could achieve housing density of up to 35 per ha. Such a housing proposal would have a greater visual impact than single storey caravans.
- It is intended that a 2m high wall with extensive landscaping will be erected along the east and west boundaries to ensure privacy.
- A requirement for open space would exist even for housing. Each pitch will be offset 3 metres from boundaries.
- The proposed use is seasonal. The site will be managed and monitored both in and out of season to ensure no anti-social activity.

7.2. Planning Authority Response

The Planning Authority's response to the grounds of appeal can be summarised as-

- It is considered that that the principle of a caravan park on this site would not be in accordance with the planning policy for the area, that sequentially preferable sites are available within Kilkee and therefore that the proposed development would not be in accordance with the proper planning and sustainable development of the area. Refusal Reason number 2 relates.
- The Planning Authority is satisfied that the process for the application for outline planning permission was carried out in full compliance with the

Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

- Having considered the appeal Traffic and Access issues, site specific objective & alternative site issues and visual impact issues are outlined and addressed in the Planners Report

7.3. Observations

Eight observations have been received from the following-

- Stephen Nugent
- Moinin Residents Association
- John Williams on behalf of Kilkee Tourism Ltd.
- Noel Kelleher
- Fiona O'Callaghan
- Catherine & Gerard O'Callaghan
- Brian Keane
- Geraldine O'Shea

The issues raised include many of those raised in section 4.4 above and can generally be summarised as follows-

- The nature of the proposed use is not residential as per the zoning and is contrary to Development Plan policy. Tourism zoning more appropriate. The proposal is commercial in nature and conflicts with core strategy housing targets and density requirements for the town.
- Visually Incongruous development
- Residential amenity concerns including noise, anti-social behaviour, odour etc. including structural integrity of neighbouring property and proposed boundary treatment.

- Road and traffic concerns including pedestrian connectivity, turning manoeuvres, car parking, existing road built on bog etc. The nearby caravan park does not have vehicular access from this road.
- The submitted application provides great detail including site berths, engineering drawings and analysis on car traffic. The application itself is more than an outline request.
- The proposed application does not equate to previously permitted housing development.
- The information used by NRB engineers is not the same as what is proposed i.e. holiday homes vs caravan park. There are questions over a number of matters raised in the report.
- Existing and proposed wastewater treatment and related concerns including impacts to Kilkee beach.
- Rerouting of overhead electrical wires.
- Invasive species on site
- Cumulative impacts with other uses in the area.
- Drainage concerns, risk of flooding
- Groundwater vulnerability concerns
- Significant concentration of mobile homes exists in Kilkee.

8.0 Assessment

8.1. Introduction

- 8.1.1. I have examined the application details and all other documentation on file, including the appeal submission and the observations received. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.
- 8.1.2. I am satisfied the substantive issues arising from the grounds of this first party Appeal relate to the following matters-
- Principle of the Development and Refusal Reason 2

- Refusal Reason 1- Traffic and Road Safety Issues
- Refusal Reason 3- Visually incongruous feature in the residential area.
- Appropriate Assessment

8.2. Principle of the Development and Refusal Reason 2

- 8.2.1. I have considered the Planning Authority's second refusal reason and given its content, I consider it appropriate to consider it in the context of the overall principle of the development at this site.
- 8.2.2. The refusal reason generally considers the proposal for a caravan park to not be in accordance with the LDR1 onsite specific objective and is not an appropriate consolidation of the structure of this residential area of Kilkee. They also detail the proposal does not achieve appropriate connectivity with existing uses and adjacent zoned lands and there are alternative tourism zoned lands with site specific objectives to encourage caravan parks.
- 8.2.3. As per the Kilkee Settlement Plan Map in Volume 3D of the CDP, the site is located on lands zoned 'Low Density Residential'. Section 19.4 Nature of Zonings, 19.5 Indicative Land Use Zoning Matrix and Appendix 2 Indicative Land Use Zoning Matrix of the CDP Volume suggest a caravan park would '*normally be acceptable in principle*' on such zoned lands.
- 8.2.4. Section 19.5.1 'Permitted in Principle' clearly explains proposed uses are generally acceptable subject to the normal planning process and compliance with the relevant policies, objectives, standards and requirements as set out in the CDP etc.
- 8.2.5. Volume 3D of the CDP Section 2 Pages 34-41 deals with Kilkee. Page 39 deals specifically with Housing and Sustainable Communities. It states-

.....During the lifetime of this Plan the focus shall be on the provision of housing for permanent occupancy on lands that are zoned for residential uses in the town of Kilkee. The following sites are identified for housing development:.....

LDR1 South Eastern Development Area, Dough

LDR1 is then annotated on the 'Settlement Plan' map which highlight's its site-specific objective status and differs it from other LDR zoned lands in Kilkee and throughout the county.

8.2.6. Notwithstanding the rather general provisions of the Zoning Matrix as regards all zoned lands within the county, it is obvious to me that this site benefits from a 'specific site objective' and is identified for permanent occupancy housing development. I also note 'LDR1' is not provided for in the zoning matrix and that section 19.5.1 clearly details that acceptable proposed uses are generally acceptable subject to normal planning process and compliance with relevant objectives i.e. that includes site specific objectives such as LDR1.

8.2.7. The LDR1 objective goes on to explain the LDR1 land-

"provides an opportunity for in-depth development that will help to consolidate the structure of this area.

If development proposals do not utilise the entirety of the lands, a masterplan must be prepared showing connectivity to future development areas and an outline of the type of development that is proposed for the remainder of the site."

The application provides a Masterplan and site layout plan drawing which does provides for connectivity to adjoining lands. However, the Masterplan in my view is perfunctory at best as it does not outline the type of development i.e. housing that is proposed for the remainder of the LDR1 lands and how connectivity for housing can be delivered throughout the LDR1 lands.

8.2.8. The immediate area adjoining and surrounding the application site is in my view predominantly residential in character with housing evident in the immediate environs. In this regard, I do not see how a proposal for a caravan park would consolidate the structure of the area as also required by the LDR1 objective. Furthermore, if permitted the proposal would undermine the delivery of comprehensive permanent occupancy housing development for all the lands identified within LDR1.

8.2.9. This outline permission proposal for a caravan park would materially contravene the site specific LDR1 zoning objective to deliver permanent occupancy housing

developments. The Board are advised that the Planning Authority second refusal reason considers the proposal “*is not in accordance with the onsite objective*” but they have not considered it to material contravene. Therefore, the Board may wish to consider if this a **‘new issue’** and therefore seek the views of the parties. However, I consider the matters relate to the same zoning, objective and principle of development that is set out in Refusal Reason 2 as well as the concerns of observers to the file.

8.2.10. I have also considered the provisions of section 37 (2) (b) of the P&D Act in which the Board could grant a permission that materially contravenes an objective. But given the well documented housing crisis across the country, the provisions of the NPF seeking compact development and the requirement for permanent occupancy housing as set out in the zoning objective and the CDP there is no provision to permit the proposal.

8.2.11. I recommend this proposal be **refused**.

8.3. **Refusal Reason 1- Traffic and Road Safety Issues**

8.3.1. The Planning Authority’s first refusal reason identifies the road network serving the site as deficient in terms of capacity, vertical alignment, surfacing and pedestrian provision in order to provide for the nature of the proposed development. They also consider the proposal would have restricted visibility from the proposed access point, is deficient in terms of onsite pedestrian provision, street lighting, traffic calming measures and signage. The proposal also has not demonstrated the internal layout can accommodate turning movements of on-site vehicles. Overall, they consider proposal will endanger public safety by reason of a traffic hazard.

8.3.2. The Appellants grounds of appeal relate to the procedural basis of the Planning Authority’s considerations and then the actual refusal reason itself. I intend to look at these matters separately before arriving at a conclusion on traffic and road safety matters.

Procedure

8.3.3. In terms of procedure, the Appellants point to the Legal Counsel Opinion of David Browne BL dated the 20/04/22 submitted with the application and appeal (Appendix

3). I have read this Opinion and I note that is based on the decision of the Planning Authority under 21/1343 which appears very similar to the subject application.

- 8.3.4. Paragraph 28 of the 'Opinion' considers *'the Council have not adhered to the statutory parameters for determining an application for outline permission'*. Paragraph 29 then concludes that the jurisdiction of a planning authority to consider a grant of outline permission is-

"confined to determining whether the principle of the development is acceptable in planning terms and the plans and particulars are confined to what is necessary to enable the Planning Authority to make a decision in terms of siting and layout."

I note Article 24 of the PDR Regs sets out requirements for *'Plans and particulars to accompany application for outline permission'* which includes the information required *"to enable the Planning Authority to make a decision in relation to the siting, layout or other proposals for development in respect of which a decision is sought"*.

- 8.3.5. The overall principle of a caravan park at this site has been examined in section 8.2 above. I do not intend to reconsider this matter here.
- 8.3.6. In considering any application for outline permission, the 'principle' of a proposal can only be considered if all 'development' required for such a proposal to operate in accordance with proper planning and sustainable development, can be achieved successfully. In other words, all matters that require planning permission (i.e. not those that can be considered ancillary) must be considered and should meet the necessary planning requirements including those detailed in the public notices. For example, it would be significantly remiss of a planning authority and ABP to permit outline permission for a house lacking public wastewater services without fully considering if the principle of wastewater can be treated and disposed off to groundwater safely onsite in accordance with such requirements. Equally it should be considered if safe vehicular access can be provided to that house as it would be very unlikely such a house without an entrance could operate in accordance with the principles of proper planning.
- 8.3.7. The public notices for this application clearly detail the application is not just for a caravan park. It also seeks outline permission for site access, boundary treatment, landscaping and a visitor amenity block. The principle of these should also be

considered and in this regard the Planning Authority have concerns relating to the proposed entrance amongst other road and traffic matters.

- 8.3.8. Therefore, I consider the Planning Authority and An Bord Pleanála must be satisfied at outline stage that an entrance can be provided to facilitate the nature of vehicles using the caravan park and that adequate sightlines and stopping sight distances can be achieved.
- 8.3.9. As per Article 24 of the PDR 2001 (as amended) and in order to consider the principle of a 'site access' for a caravan park the application should adequately provide for plans and particulars in relation to the provision of the entrance. Such plans and particulars should include for sight lines, stopping sight distances, all vehicle types and sizes using the site access, traffic manoeuvres of such vehicles into and out of the site etc. to allow for adequate consideration of the potential impact on the road network and its users.

Refusal Reason

- 8.3.10. In terms of the Planning Authority's actual refusal reason, they specifically highlight the road network serving the site as deficient in terms of capacity, vertical alignment, surfacing and pedestrian provision in order to provide for the nature of the proposed development.
- 8.3.11. I would agree the road network to the site is deficient in many respects as highlighted by the Planning Authority. However, much of this is outside of the control of the applicants. The site is located within the settlement boundary of Kilkee and is zoned for development with this site specially identified for housing. Development at this site would be subject to development contributions and I note the Council's 'Development Contribution Scheme 2017-23' provides for roads and includes for general improvement schemes, streetscape improvement works, footpaths and pedestrian linkages. In this context I do not consider it reasonable to refuse the proposal on the basis of the existing public road network at this location.
- 8.3.12. The refusal reason details the proposed layout and boundary treatments would also restrict visibility at the proposed access point and the existing adjacent access points to the east and west of the site. It also considers the proposal has not demonstrated that the proposed internal road layout can appropriately accommodate the turning movements associated with onsite vehicles.

- 8.3.13. The application is accompanied by two site layout plan drawings. Drawings number 22166-MMS-ZZ-ST-DR-C-10000 and 1010 P1 both identify the location of the site entrance to the southeast of the site which is located almost directly opposite the entrance to the Moinin estate. The latter drawings show the road to the front of the site will generally exceed 6m across the frontage of the site. A 2m footpath is also shown.
- 8.3.14. The NRB report submitted with the application details the determining factors for traffic safety at junctions as sightlines and stopping sight distances. They then detail the requirements of DMURS and conclude there are no constraints to providing a sightline or stopping sight distance at this site.
- 8.3.15. I note the Applicants contention that as access from this road was previously granted for 62 units under 06/115 that a principle has already been established. I do not consider it reasonable to rely on a permission granted under 06/115 which has not been completed and is now expired, to contend a principle has been established for an entrance at this site, especially given the clearly different nature of vehicles intending to access a caravan park over that permitted under 06/115.
- 8.3.16. Having considered the above, visited the site and noting its location within the settlement boundary and its zoning for development, I consider a vehicular entrance can be provided in accordance with DMURS. However, the onus is on the applicant to demonstrate site access for the proposal can be provided in the submitted plans and particulars. It is not sufficient to simply state 45m/49m sightline and 45m stopping sight distances can be achieved especially when the site layout plan drawing submitted suggests that the sightlines would be obstructed by the undetailed landscaping shown on that drawing.
- 8.3.17. In terms of turning movements within the site the NRB report details the internal layout can be adjusted/tweaked as required at detailed design or full application stage so as to comply with the requirements of DMURS. In this regard I would have no major concerns that this cannot be resolved at permission consequent stage. However, the application is relatively silent on the type and size of vehicles the site will provide for and the impact of same at the proposed site access point.
- 8.3.18. I consider the traditional concept of caravan park has changed and now may include for differing sizes of caravans/mobile homes and could include for campervans which

can be quite sizeable. I note the berths identified in the drawings are generally 14m long and 4m wide. While I consider the nature of the use of such berths within the site as a site management issue, I would have concerns relating to turning movements for such vehicles in and out of the site from the public road. This concern also extends to other large vehicles which may serve the proposal e.g. waste management and emergency vehicles. To recommend outline permission for a site access for a development of this nature, which is located within a largely existing residential area, I would need to be satisfied traffic turning movements for all vehicle types accessing the proposal could be safely facilitated from the public road.

8.3.19. In the absence of such detailed drawings demonstrating required sightlines, stopping sight distances and traffic turning movements (requirements which I consider standard for such an application regardless of the application type), I am not satisfied the site access for vehicular purposes serving a caravan park can be achieved and accordingly permission should be **refused**.

8.3.20. The Planning Authority also consider the proposal is deficient in terms of onsite pedestrian provision, street lighting, traffic calming measures and signage. The site layout plan drawing provides for a 2m footpath to the southern boundary and into the site past the entrance. It then provides a 1.2m footpath within the 4.5m road serving the site as well as a dedicated path traversing the site from the amenity block to the southwest corner of the site. Pedestrian provision is not provided/adequately provided to the Percy French Estate to the north or to adjoining lands to the East and West.

8.3.21. In terms of an application park for a caravan park only, I do not consider pedestrian provision to be so deficient as to warrant a refusal and such deficiencies could be improved at permission consequent stage by condition. I also consider matter such as street lighting, traffic calming measures and signage can be resolved by condition at permission consequent stage.

Conclusion

8.3.22. Having considered the above, I am satisfied the principle of outline permission extends to the proposed site access/entrance. In the absence of detailed drawings demonstrating required sightlines, stopping sight distances and traffic turning

movements I am not convinced the principle of site access for vehicular purposes serving a caravan park can be achieved. Accordingly permission should be **refused**.

8.4. Refusal Reason 3- Visually incongruous feature in the residential area.

- 8.4.1. The Planning Authority's third refusal reason considers that that the proposed development would constitute a visually incongruous feature in this residential area of Kilkee, would be an undesirable departure from the existing settlement pattern of the area, would have adverse impacts on adjacent amenities by reason of general disturbance, and therefore would not be in accordance with the proper planning and sustainable development of the area.
- 8.4.2. The Appellants contend that it is unclear how visual impact is a material consideration of the principle of the development with the use being normally acceptable in principle. They argue that no visual impact assessment has been undertaken and no details submitted given the application is for outline permission. They contend that careful consideration has been given to the layout, siting and screening of berths to ensure it relates to the surrounding character but also to protect the amenity of existing neighbouring residents.
- 8.4.3. Having already considered the principle of the development under section 8.2 above I do not intend to discuss it further here. Kilkee is a 'Small Town' in County Clare's settlement hierarchy. As noted in Volume 3D of the CDP Kilkee is a "*popular, well established seaside resort situated on the picturesque Moore Bay on the Wild Atlantic Way*". In this regard, and as noted in Ordnance Survey aerial photography available to ABP, caravan park style developments are commonplace and well established in Kilkee. In this context, I do not agree that a caravan park proposal at this site would be a visually incongruous feature in Kilkee. While it may differ from its immediate environs, it would not significantly and negatively detract from the visual character of the area to an extent that warrants refusal.
- 8.4.4. I acknowledge concerns relating to existing residential amenity in the area including those as highlighted by the observers. Given the site's location on zoned lands within the settlement boundary, I am satisfied that matters including general disturbance are ones for the operational management of the facility and could be addressed

through a permission consequent application. I do not agree the nature of such a use would be an undesirable departure from the existing settlement pattern of the area.

8.4.5. The Board should set aside the Planning Authority's third refusal reason.

8.5. **Appropriate Assessment**

8.5.1. **Introduction**

- a) The application was accompanied by a Stage 1 Screening Report prepared by Enviroguide Consulting.

8.5.2. **Stage 1 – Screening**

- a) The applicant's AA Screening Report concludes that-
“mitigation measures have not been taken into account” and
*“.....it can be concluded, based on the best scientific knowledge available, that the possibility of any significant effects on any European Sites, whether arising from the project itself, or in combination with other plans and projects, can be **excluded**. Thus, there is no requirement to proceed to Stage 2 of the Appropriate Assessment process; and the preparation of a Natura Impact Statement (NIS) is not required.”*
- b) The requirements of Article 6(3) i.e screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning & Development Act 2000 (as amended) are considered fully in this section.

8.5.3. **The Proposed Development and Receiving Environment**

- a) The application site can be described as an underutilised, overgrown brownfield site within the established settlement boundary of Kilkee. There are no watercourses evident in the immediate or nearby environs of the site.
- b) The application is for Outline Permission for a caravan park proposal with 45 berths, a site access, connection to public wastewater and water supply as well as ancillary matters is for 48 houses and ancillary works.
- c) The site is not located within a designated European site.

8.5.4. European Sites

- a) Given the location of the site, and the nature and scale of the proposed development, I consider the following designated European sites as set out in Table 1 to be within the zone of influence of the application site-

Table 1-

| Site Name & Code | Qualifying Interest / Special Conservation Interest | Distance |
|----------------------------|---|----------------------|
| Kilkee Reefs SAC 002264 | 1160 Large shallow inlets and bays 1170 Reefs 8330 Submerged or partially submerged sea caves | c. 600m to the NE |

- b) Conservation Objectives-

- SAC- Available to view at-
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002264.pdf

- c) Using the source- pathway-receptor approach, I have considered European Sites in the wider area including those identified in Table 1 (Page 12) of the Applicants Screening Report which sets out European sites with 15km of the application site (Figure 4). I am satisfied that these other European sites can be 'screened out' on the basis that significant impacts on such European sites could be ruled out as a result of the physical separation distance from the appeal site, the extent of marine waters, the absence of any direct hydrological or other pathway to the appeal site as well as having regard to the site location on zoned land within the settlement boundary where ecological connections are not considered likely.

8.5.5. Test of Likely Significant Effects

- a) The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects in view of the conservation objectives of those sites.

- b) I have reviewed the 'Qualifying Interests' and associated maps 3, 4 and 5 within the identified European Sites and which the proposed development has the potential to significantly impact upon.
- c) Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites, the indicators identified in the applicants Screening Report (section 3.5.2) and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-
- Impacts on water quality during operation and construction i.e. wastewater & surface water including pollution from silt, sediments etc.
 - General disturbance during construction and operation

8.5.6. Potential Effects

The Screening Report identifies the following-

- A weak hydrological connection between the site and Kilkee Reef via surface water discharge to the public surface water network. They consider potential impacts negligible due to the size of the proposal and short construction phase, the absence of direct hydrological pathways, the infill nature of the development, the distance to the SAC and potential for dilution.
- Sustainable urban drainage will also be incorporated into the design as required by the County Development Plan. This is detailed in section 4 of the submitted 'Engineering Infrastructure Report' where a 150m³ capacity exists in an attenuation tank serving for the Moonin estate and the application site. The report also details a new tank will be provided to cater for a 290 m³ requirement. The screening report details that it is unclear if such measures are considered mitigation and therefore such measures are not relied upon to mitigate against significant effects to European sites. I am satisfied any such proposals can be considered standard best practise measures.
- Section 3.5.10 discusses the existing Kilkee WWTP which operates under EPA licensing. They detail a proposal for a new WWTP is being progressed by Irish Water with works expected to commence in 2024. The proposal will

result in an increased loading. The Planning Authority's own screening report refers to a report from Irish Water on the previous application for this site in which it was noted no objections were raised.

- The site is located within the existing settlement boundary on zoned lands with established uses surrounding it. In this context general disturbance significantly impacting upon the conservation objectives during construction and operation to the European site can be excluded.

8.5.7. In-combination Impacts

- a) The Screening Report discusses how the proposal is intended to replace section of an unfinished housing development i.e. 06/115 and extended under 12/276 in which no significant impacts had been identified. A number of recently permitted developments are highlighted.
- b) The proposal should also be considered as part of the wider development of Kilkee as part of CDP which was also subject to AA by the Local Authority.
- c) I do not consider there to be any other specific and permitted planning applications in the immediate area that could have in combination effects with the proposed development on the identified European Sites.

8.5.8. Conclusion

- a) 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 and having regard to the submitted Screening Report which I consider to be robust and comprehensive, it is concluded that the project individually (or in combination with other plans or projects) would not have significant effects on the following European Site-
 - Kilkee Reefs SAC 002264in view of that site's Conservation Objectives, and Stage 2 Appropriate Assessment is not required.
- b) No mitigation 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.

9.0 Recommendation

9.1. I recommend that permission is refused for the following reasons-

10.0 Reasons and Considerations

1. The Board considers that the proposed development would materially contravene the LDR 1 site specific zoning objective of the County Development Plan 2017-23 (as varied) which seeks the *“provision of housing for permanent occupancy on lands that are zoned for residential uses in the town of Kilkee”* and as identified on the “Kilkee Settlement Plan” map. Furthermore, the proposal as set out in the application would compromise the opportunity for in-depth development of the LDR1 lands, the consolidation of the structure of the area and does not adequately demonstrate connectivity to all the LDR1 lands for such housing development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The Board is not satisfied that the proposed development would not endanger public safety by reason of a traffic hazard because sightlines, stopping sight distances and traffic turning manoeuvres have not been demonstrated into and from the proposed entrance.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby
Planning Inspector

06th of April 2023