



An
Bord
Pleanála

Inspector's Report

ABP-318672-23

Development	Retention, modification and completion of aparthotel to include 20 hotel bedrooms, bar, restaurant and 24 apartments over basement, and construction of upgrades to waste water treatment system
Location	Garrettstown Strand, Coolbane, Kinsale, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	23/4236
Applicant(s)	Tulsan Limited
Type of Application	Permission / Permission for retention
Planning Authority Decision	Notification to Grant
Type of Appeal	Third Party
Appellant(s)	Denis Calnan
Observer(s)	<ol style="list-style-type: none">Garrettstown Residents Owners Management CompanyMarie Calnan
Date of Site Inspection	22 nd February 2024
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.7 hectares and is located within the townland of Garrettstown Strand, Coolbane, County Cork, which is located approximately 2.5km south of the village of Ballinspittle and approximately 10km southwest of the town of Kinsale.
- 1.2. The subject site comprises of a 4-storey unfinished hotel structure with a steel frame and concrete slabs laid across the four storeys, and a greenfield site which accommodates an existing wastewater treatment plant (WWTP), septic tank and foul pipeline network. The site of the unfinished structure is secured by construction fencing. The site is bounded to the north by a residential dwelling, to the northeast/east by a number of holiday cottages, to the east/southeast by a caravan park, to the west and south by the regional road R-604 beyond which is Courtmacherry Bay.
- 1.3. The location of the existing WWTP is approximately 150 metres northwest of the existing structure. This WWTP serves the hotel development and adjoining dwelling to the north via a septic tank, and the holiday cottages to the northeast/east.

2.0 Development

- 2.1. Permission is sought to retain, modify and complete a partially completed aparthotel. The structure will have four levels (including a basement level) and will be built to a ridge height of 12.32 metres above ground level. Permission is also sought for the construction of necessary upgrades to the current wastewater treatment plant. The layout will comprise of the hotel within the centre of the structure with apartments located on attached wings to the north and south of the central hotel.
- 2.2. The basement level to be retained will comprise of a gym, games/cinema room, kitchen area and store with staff changing rooms. The ground floor of the central hotel will comprise of a reception, bar and lounge area. The first floor of the central hotel will comprise of a restaurant and dining room and the second and third floor levels of the central hotel will comprise of 20 no. bedrooms. The north and south wings are internally separated from the central hotel and will comprise of apartments across three levels.

- 2.3. The external finishes of the structure will comprise of part smooth render finish and part stone to the walls with a zinc cladding finish to the third floor of the central hotel and roof.
- 2.4. It is proposed to remove the existing foul line and septic tank that serves the hotel development site and adjoining dwelling, remove the existing wastewater treatment plant (WWTP) that serves the holiday cottages, hotel and dwelling and install a new WWTP and foul drainage network. This proposed pipe from the hotel development site will traverse the vehicular entrance to the holiday cottages, proceed southwest towards the junction with the R-604, run along the public road where it will then turn eastwards along the north elevation of the adjoining dwelling and traverse the lands to the north of the dwelling towards the new WWTP. The existing WWTP outfall pipe location is to be reused and a proposed new outfall pipe will discharge to the existing stream through a new headwall structure. The layout is illustrated under further information site layout drawings L873-004B and L873-005B.
- 2.5. Stormwater drainage is proposed to be discharged via a silt trap and petrol interceptor to a proposed storm sewer which will connect to an existing storm sewer that crosses the R-604 and outfalls to the stream to the west. It is proposed to connect to an existing watermain along the public road.
- 2.6. The application was accompanied by a letter from the Applicant's solicitor stating that it has the legal right to upgrade the wastewater treatment plant and said right was granted by Deed on 3rd February 1999. It is stated that the owners of the site are required by Court to grant a formal wayleave in order to regularise matters. The application is also accompanied by further legal documentation and land registry documentation.

3.0 Planning Authority Decision

3.1. Decision

In considering the application, Cork County Council (the Planning Authority) sought further information on a range of issues, including the following:

- Clarification that the development will be operated by a single operator.

- The submission of a construction and environmental management plan detailing all measures to be implemented during the construction phase to ensure the protection of the receiving environment.
- The submission of a surface water management plan for the construction phase to prevent and minimise the potential risk of silt contaminated surface water run-off.
- The submission of a site-specific construction waste management plan.

The Planning Authority decided to grant permission by Order dated 22nd November 2023, subject to 45 no. conditions.

- Condition 2 related to a Section 47 agreement to ensure the entire complex is retained in single ownership, to restrict the use to short term holiday rental use and to ensure no long term renting, ownership or sub leasing occurs.
- Condition 4 required an amendment to the site layout to reduce the surface area of the hard surfaced external front terrace.
- Condition 5 required a biodiversity led comprehensive landscape plan to be agreed prior to commencement of the development.
- Condition 6 required the submission of a site-specific ornithological plan to account for Chough within the site.
- Condition 14 required detailed plans and particulars to be agreed in relation to all the recommendations set out in the submitted Inclusive Mobility Audit Report.
- Condition 16 related to a mechanism that restricts discharge from the wastewater treatment plant during high tide.
- Condition 16 required the wastewater treatment plant to be constructed in accordance with EPA guidelines and a maintenance contract to be entered into.
- Condition 30 required the implementation of the submitted surface water management plan for the construction phase.
- Condition 45 required the payment of a financial contribution amounting to €93,407.67.

3.2. Planning Authority Reports

Planning Reports

There are a total of 2 no. area planner reports which assessed the development in terms of the zoning objective, the design and layout, ecology, environmental issues, car parking and lighting. An EIA preliminary examination was undertaken. The planner considered that planning applications were not forums for resolving or adjudicating over land ownership matters and relied on Section 34(13) of the Act. After submission of the further information a grant of permission was recommended. These recommendations and reports were endorsed by the Senior Planner.

Other Technical Reports

Area Engineer (reports dated 30/03/23 and 20/11/23) – They had no objection to the development subject to conditions.

Ecology (reports dated 30/03/23 & 20/11/23) – They originally requested further information for the submission of a CEMP and a biodiversity landscape plan. After submission of further information, they had no objection subject to conditions.

They undertook a screening for appropriate assessment, and they stated that the development, by itself or in-combination with other plans or projects, would not adversely affect the integrity of any European Site in view of the site's conservation objectives. They noted that Chough was utilising a ledge in the basement section of the structure during the 2023 breeding season and recommended an ornithological plan to be submitted. They also recommended that a condition is attached that restricts discharge of wastewater on an eb tide 1 hour after high tide to minimise the potential influence on the pNHA.

Environment Section (reports dated 06/04/23 and 20/11/23) – They originally requested further information for the submission of a CEMP and a surface water management plan and after submission of further information they had no objection to the development subject to conditions.

Public Lighting (reports dated 08/03/23 and 6/11/23) – They originally requested additional information and after submission of the information they had no objection to the development subject to conditions.

3.3. Prescribed Bodies

Uisce Éireann – They had no objection to the development subject to the signing of a connection agreement prior to commencement of the development.

Inland Fisheries Ireland – They noted that there was no assimilative capacity study submitted to assess the proposal in the context of the surface water regulations. (*The PA's environmental officer did not consider this necessary as the mixing zone is within tidal waters*).

3.4. Third Party Observations

A total of 3 no. third party submissions were received which raised a number of concerns including land ownership disputes and concerns in relation to a wastewater plant failure and maintenance of same.

4.0 Relevant Planning History

PA Ref. 97/4569 (site to the northeast)

Peter and Fionnuala Jordan were granted permission for the construction of 23 no. holiday dwellings.

PA ref. 02/2828 / ABP Ref. 04.204806 (subject site)

Denis Calnan was granted permission for demolition of hotel premises & construction of hotel, bar, restaurant and 20 bedrooms, 24 apartments, sewage treatment unit, water supply and parking.

PA Ref. 08/7234 (subject site)

Permission was granted for alterations to application ref. 02/2828 to include elevational changes to approved hotel and apartment building. An extension of duration was then approved under application ref. 18/6611. This permission expired on 31/12/2021.

PA Ref. 21/5276 (subject site)

Permission was sought by Tulsan Limited for the same development, however, the application was withdrawn.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

Objective RP 5-27: Holiday Home Accommodation

Encourage appropriately scaled holiday home development to locate within existing settlements, where there is appropriate infrastructure provision, where they can contribute to the maintenance of essential rural services and help act as a revitalising force in counteracting population decline.

Objective TO 10-10 Tourism Facilities

a) Encourage tourism related facilities, including accommodation and other developments within existing settlements subject to normal site suitability considerations where they can best support compact growth and the regeneration of settlements, the provision of services and the general economic vitality of the settlement.

Objective TO 10-11 Tourist Accommodation

Generally to encourage holiday accommodation to locate within established settlement boundaries and that such development relates sympathetically to the scale and level of development and facilities in the locality.

Objective GI 14-9: Landscape

a) Protect the visual and scenic amenities of County Cork's built and natural environment.

GI 14-12: General Views and Prospects

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

Objective GI 14-13: Scenic Routes

Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this Plan.

Garrettstown is designated as an 'other location' settlement within the Plan and part of the subject site is designated as a 'special policy area.

Objective ZU 18-20 Special Policy Area

Recognise that there are a small number of sites within the urban areas of the County where the normal land use zoning requirements do not apply. These can be subdivided into 3 distinct categories namely:

- a) Areas suitable for mixed use development (both brownfield and greenfield sites) where the range of uses are outlined.
- b) Areas suitable for mixed use development where further study is required to guide the significant or strategic nature of the site. This will involve the preparation of a master plan, design brief or area action plan before any formal planning application is made for the development. These should be subject to SEA and HDA screening where appropriate.
- c) Areas which require specific policy guidance to protect the unique characteristics of that particular area.

Volume 5 West Cork – Section 1.23 Garrettstown/Garrylucas

The vision for Garrettstown/Garrylucas is to support its development as a multi-use water sport area, improve public amenity and recreation facilities, protect the unique natural heritage, ecology and High Value Landscape of the coastal settlement and to allow for small-scale development which would be not injure this sensitive landscape and the ecological environment.

Objective X-04

Support the delivery of sensitively designed hotel/tourist accommodation within this scenic, beachfront site. The site is close to Garrylucas Marsh and to Garrettstown Marsh. Proposals for development within this site to be designed taking account of the sensitivity of the environment. Particular attention should be paid to the protection of marsh/wetland habitats, dune habitats and to the avoidance of damage to natural hydrological processes associated with these wetland sites.

5.2. National Policy

- Climate Action Plan 2024

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

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.

5.3. Regional Policy

- Southern Regional Assembly's Regional Spatial and Economic Strategy

Regional Policy Objective 53 Tourism

- a. Enhance provision of tourism and leisure amenity to cater for increased population in the Region including recreation, entertainment, cultural, catering, accommodation, transport and water infrastructure inter alia;

5.4. National Guidance

- Department of Environment, Heritage and Local Government's Development Management Guidelines for Planning Authorities (2007)
 - Section 5.13 Issues Relating to title to land

5.5. Natural Heritage Designations

The subject site is not located within any designated site. The nearest designated sites are Garrettstown Marsh, a proposed Natural Heritage Area (pNHA), located approximately 150 metres northwest of the site, and Garrylucas Marsh, also a pNHA, located approximately 350 metres east of the site.

The nearest designated European Sites are the Old Head of Kinsale Special Protection Area (SPA) (Site Code 004021), which is located approximately 3km south, and Courtmacsherry Bay SPA (Site Code 004219), which is located approximately 5.5km west. The Courtmacsherry Estuary Special Area of Conservation (SAC) (Site Code 001230) is located approximately 6km west and the Seven Heads SPA (Site Code 004191) is located approximately 8km southwest.

5.6. Environmental Impact Assessment (EIA) Screening

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Refer to Appendix 1 regarding this preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was lodged to the Board on 12th December 2023 by Denis Calnan. The grounds of appeal can be summarised as follows:

- The applicant does not have a legal right to construct the proposed wastewater treatment plant on the Appellant's property. A letter from the Appellant's solicitor is provided.
- The Appellant was granted planning permission for a hotel development on the subject site as part of application ref. 02/2828 / ABP 04.204806.
- Permission to increase the capacity of the existing wastewater treatment plant (which was granted under application ref. 97/4569) was not granted as described in the planner's report. This 97/4569 plant was to be decommissioned as conditioned under Condition 20 of ref. 02/2828 and a new WWTP was to be constructed to serve the hotel development and the 16 cottages. A site layout plan is provided showing the new location where the WWTP was to be constructed (Exhibit 7). At appeal stage it was clarified that this would be a new system.
- The disposal of wastewater to a private effluent system was to be an interim measure and the developer was to decommission the facility and arrange connection to the public sewer when available. A letter from the Council's water services engineer is provided confirming same (Exhibit 32).

- The applicant was not granted permission onsite under permission ref. 21/5276, however further information was requested for the applicant to submit legal documentation demonstrating sufficient legal interest to connect to and implement the wastewater treatment plant works proposed as well as the future operation and maintenance of the wastewater treatment works. No legal documentary evidence was provided, and the application was withdrawn.
- No change has been made in this application in respect of the wastewater treatment works yet the planning authority did not issue the same further information request.
- All previous permissions are governed by permission ref. 02/2828 / 04.204806.
- The applicant has certain rights to connect to and use the current wastewater treatment plant situated on the Appellant's property which are based solely on an agreement between the Appellant's predecessors in 1999. A copy of this agreement is provided (Exhibit 29). The Appellant states that he never opposed this agreement, only the claims claiming extended rights over his property.
- This agreement gives the previous hotel premises a right to a connection to the wastewater treatment plant under ref. 97/4569 at a point marked xx on the existing pipeline. A layout plan is provided illustrating this (Exhibit 30).
- The agreement provides the Appellant to grant a specific wayleave from the point xx to the wastewater treatment plant along the route of that pipeline together with the right to enter upon that part of the lands to clean, repair or renew the pipeline. It is further agreed that in the event that the sewage increased as a result of an expansion to the hotel, the hotel would be responsible for the capital expenditure related to such an increase.
- The agreement does not give the Applicant the right for the Applicant to enter the property to construct and implement a wastewater treatment plant as proposed for their development.
- The wastewater treatment plant granted under 02/2828 has a 320 PE capacity whilst the proposed plant will have a 900 PE capacity. It is suggested that the application lacks transparency and it is in preparation for a future planning application for a multi-unit housing development on nearby lands.

- The Applicant has not been granted the right to construct a WWTP by the court in March 2019. It is stated that the judge clarified that construction should never have been in the Order and the Applicant's view that it had the right to enter the property for the purpose of upgrading the WWTP is not what was said in the Order or in court that day. A transcript of the digital audio recording is provided (Exhibit 33).
- No supporting legal documentation has been provided by the Applicant that confirms that they have the right to construct and upgrade a WWTP on the Appellant's property.
- There is no existing pipe or wayleave from the existing treatment plant to the stream as claimed by the Applicant. The existing WWTP discharges to a soakaway and there is no existing pipe. There is no entitlement for a new wayleave to be created for the construction of a new pipeline, series of manholes and headwall structure for the purpose of discharge to a stream.
- Section 2.20 of the application forms states that it is proposed to discharge surface water to a soakaway, however, no details of this soakaway is provided within the application. Drawing no. L- 873-006 relates to a storm water pipe crossing the road to the Appellant's property, however, the information provided is deficient.
- It is claimed that the planning authority made an error in granting permission as they did not seek clarity regarding ownership of the lands in which the treatment plant was to be constructed and that they did not request the application contain a letter of consent to apply for planning on lands not owned by the applicant.

6.2. Applicant Response

The Applicant issued a response to the grounds of appeal on 18th January 2024. Their response is summarised as follows:

- The right to upgrade the wastewater treatment plant has been before the courts where they have decided within the Applicant's favour. The Appellant's continue to challenge the decision. The case is listed for further mention at Cork Circuit Court next May.

- An extract of the exact hearing date on 28th March 2019 is provided which includes the judge stating that Tulsan are entitled to enter the subject lands and connect up to a sewerage treatment plant from the point xx.
- The Appellant has accepted that the Applicant has the right to have the treatment plant upgraded, albeit by the Applicant paying the Appellant to carry out the necessary upgrade rather than the Applicant carrying out the work itself. However, the Applicant points the Board to the planning authority's planner's report in terms of Section 34(13) of the Planning and Development Act 2000, as amended, and corresponding Ministerial Guidelines. An Bord Pleanála files refs. 311516 and 312381 are also cited.

6.3. Planning Authority Response

6.4. The planning authority (PA) issued a response to the grounds of appeal which can be summarised as follows:

- The PA are satisfied that the application was valid having regard to Section 34(13) of the Act.
- There are various allegations, entitlements and differences of opinion regarding ownership between both parties and they were considered by the PA.
- The primary focus is on the adequacy of the proposed sewage proposal and the PA's engineering and environment sections are satisfied with the proposal.
- This area is a special policy area within the Development Plan to facilitate hotel/tourist development and has a stated vision to improve public amenity whilst safeguarding the natural heritage, ecology and high value landscape.
- It is critical that the unfinished brownfield site is brought back into use for sustainability and economic tourism on the 'wild Atlantic way'. The proposed scheme and grant of permission is therefore essential.

6.5. Observations

An observation was received from Garrettstown Residents Owners Management Company (GROMC) on 4th January 2023 which raised the following issues:

- The existing wastewater treatment plant is a functioning plant that GROMC have maintained since 2001 and there are concerns that if the new plant fails, the development is not completed or the hotel fails, the future maintenance of this plant would be beyond the scope of the management company, the residents, owners and the current landowners.
- There must be an agreement between Tulsan Ltd and the management company and residents in order to prevent any unnecessary costs, potential damage to the environment and loss to the environs and to the residents of Kinsale Coastal Cottages and the management company.
- Whilst discussions have taken place no agreement is in place and therefore it cannot be said that there is no objection from the management company.
- The development interferes with the rights of the management company, the Kinsale Coastal Cottages and breaches the property rights of the Management Company and cottages.
- There are concerns regarding the Applicant's conduct due to a large dangerous mound of waste material they have left beside one of the houses.
- No court order has been produced as part of the application.

A further observation was received from Marie Calnan on 16th January 2024. A number of issues raised repeat a number of the grounds of appeal and therefore these will not be summarised in order to avoid repetition. However, the following additional concerns are raised:

- There are concerns regarding how the planning authority could grant permission for the development without the necessary consents or supporting legal documentary evidence.
- The description of the planning application is to construct an upgrade of the existing wastewater treatment plant, however, there is no legal right for the Applicant to construct or upgrade a wastewater treatment plant on the observer's property without her permission.
- It is stated that the Observer and the Appellant returned to court on 16th January 2024 where their counsel pointed out to the court that the Applicant was trying

to construct a new plant. It is stated that the judge has requested a copy of the digital audio recording of the hearing in court of 23rd January 2020 and the Order will be based on what this contains. However, a decision will not be made until the Board make theirs.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the planning authority and having inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the substantive issue in this appeal to be considered is in relation to a legal dispute regarding the proposed upgrade of the existing wastewater treatment plant.
- 7.2. Notwithstanding this, the Board should note that having reviewed the design and layout of the development, and to the reports of the planning authority, to the submissions received and having inspected the site, I am satisfied with the overall design and layout of the development. The subject site previously comprised of a hotel development, represents an unfinished site brownfield in nature and is designated as a special policy area for a hotel/tourist accommodation under objectives ZU 18-20 and X04 of the Cork County Development Plan 2022-2028 (CDP).
- 7.3. The Board should note that it is proposed to connect to and upgrade an existing wastewater treatment plant. I note the reports from the planning authority's (PA) environment section who raised no concerns with the development in terms of public health. Having regard to the existing treatment plant onsite which serves the site and the existing holiday cottages, to the proposed upgrade works which will increase the capacity of the system from 450PE to 900PE and which will provide a controlled discharge for 1 hour before and 1 hour after high tide, I am satisfied that the proposed development is acceptable in terms of public health.
- 7.4. Furthermore, the site is located within a high value landscape and off a scenic route (S67) as designated under the CDP, however, due to the brownfield and unfinished nature of the site and to the protected views and prospects from the scenic route being towards the coast, I have no significant concerns with the impact of the development on the visual amenities of the area, and I consider the completion of this site would

result in an improvement in the visual amenities of the area. Additionally, having regard to the separation distances of the development from existing residential properties and to the special policy area designation, I have no significant concerns with the proposed development on residential amenity.

- 7.5. Having regard to the above, I am satisfied that the development complies with the provisions of the CDP, namely objectives RP 5-27 (holiday home accommodation), TO 10-10 (tourist facilities), TO 10-11 (tourist accommodation), GI 14-9(a) (landscape), GI 14-12 (general views and prospects), GI 14-13 (scenic routes), ZU 18-20 (special policy area) and X04.

Legal Interest

Background

- 7.6. The Board should note that the key issue in relation to this appeal is a dispute over the legal right of the Applicant to undertake the works associated with the upgrading of the wastewater treatment plant (WWTP), foul sewer line and outfall. The issue arises from a 1999 deed agreement between the original sellers and purchasers of the land which included a wayleave for wastewater. According to the Appellant, the site of the WWTP is owned by him.
- 7.7. The Appellant states that the Applicant has the right to connect to the existing WWTP at the point marked xx (see Exhibit 30 of the grounds of appeal). It is stated that the 1999 agreement then requires the Appellant to grant a specific wayleave from the point marked xx to the WWTP along the route of the pipeline for the purposes of cleansing, repairing or renewing the pipeline. It is stated that the agreement provides the hotel responsible for any capital expenditure required to fund the increase in the capacity of the WWTP in the event of a hotel expansion. However, the Appellant states that the Applicant does not have the right to enter the lands and do the works itself.
- 7.8. The Appellant also states that there is no existing outfall pipe from the WWTP to the stream and existing discharge is accommodated by a soakaway. Furthermore, it is stated that the Applicant does not have the right to construct a new pipeline, series of manholes or headwall structure. On the contrary, the Applicant states that it has the right to enter the lands, connect to the xx point and increase the size of the WWTP.

Validation

- 7.9. I note the comments from the Appellant and Observer with regards to the validation of the application and that the application should have contained a letter of consent from the owner of the subject lands of the WWTP.
- 7.10. The Board should note that I have reviewed the documentation submitted with the application including confirmation from the Applicant that there was land outside of its ownership in which it had sufficient legal interest in. Having regard to the submitted documentation, including letters from the first party's solicitor and legal counsel, I am satisfied that the Applicant demonstrated sufficient interest in the lands of the WWTP location to make the application.

Issue of dispute

- 7.11. I note that the description of the application is "*permission for the construction of necessary upgrades to current wastewater treatment system*". As stated above the Appellant accepts that the Applicant has a right to connect to the wastewater infrastructure, however, argues that it does not have the right to carry out '*construction*' works related to the pipeline, treatment system or outfall. The Applicant states that it does have the right to increase the size of the WWTP and both parties have been before the courts. I note that both parties have submitted various legal documentation and solicitors' letters. There have been 2 no. observations submitted which either repeat the same issues outlined in the grounds of appeal or have been considered by the planning authority at application stage.
- 7.12. With regards to the comments regarding the existing WWTP discharging to a soakaway, I note the maps provided by the Appellant (Exhibits 7 and 9 which relate to the layout under application ref. 02/2828 / ABP 04.204806) indicated a piped outfall towards the direction of the stream. Furthermore, I observed an outfall pipe at this location on the date of my site inspection.
- 7.13. The PA addressed the dispute within the planning report and in their submission to the Board stating that planning applications are not forums for resolving or adjudicating over ownership disputes between various parties.
- 7.14. Having regard to the foregoing, I would consider it unreasonable at this stage to refuse permission on the grounds of this legal dispute. The Board should note that the issue

is subject of Court proceedings, and it is not the role of the Board to resolve or determine the issue. Section 34(13) of the Planning and Development Act provides that if the Applicant lacks title or owners consent to do works permitted by a planning permission, the permission does not give rise to an entitlement to carry out the development. I draw the Board's attention to Section 5.13 of the Department of Environment, Heritage and Local Government's Development Management Guidelines for Planning Authorities (2007) in this regard. Therefore, it is my view that there is sufficient basis for the Board to grant permission.

7.15. Notwithstanding this, the Board should note that if permission is granted and it subsequently transpires that the Applicant does not have the legal right to upgrade the treatment plant and pipelines, such a grant of permission does not bestow ownership rights on the Applicant, nor can it usurp any Court findings on the ownership issue. It is a matter for the Applicant to satisfy itself that it indeed has sufficient rights over the lands before works are commenced.

Other issues

7.16. The Appellant and Observer also raise issues with the proposed surface water discharge arrangements. I note from the submitted plans that the Applicant proposes to discharge surface water to an existing outfall pipe within the subject site which traverses the regional road and the Appellant's lands and discharges to the stream. I note that no changes or modifications are proposed to the existing outfall pipe or structure. Therefore, I am satisfied with the development in this regard.

7.17. The Board should note that a technical note from the Inspectorate Ecologist (IE) accompanies my report which considers the impact of the development on a pair of breeding Chough which are known to utilise the basement level of the structure. The Board should note that this issue did not form part of the grounds of appeal, however, due to Chough being a qualifying interest for the Seven Heads Special Protection Area (SPA) approximately 8km from the site, a detailed assessment from the IE was required to consider whether there is any ex-situ impact on this European Site. The AA implications of this is assessed under Section 8 below.

7.18. Having regard to this technical note, to the findings of the submitted CEMP and to the report from the biodiversity officer of the PA, I note that there will be some displacement of chough, however, this will not be significant given the alternative

locations available. I recommend that a condition is attached for an ornithological plan to be agreed with the Planning Authority prior to commencement of development which clearly defines measures to be implemented to manage impacts on breeding Chough during site preparation works and the construction phase. Furthermore, the measures outlined in the submitted CEMP to avoid impacts on the breeding Chough at the unfinished building should be implemented and supervised by an appropriately experienced ecologist.

8.0 **Appropriate Assessment (AA) Screening**

8.1. I have considered the project in light of the requirements Section 177U of the Planning and Development Act 2000 as amended. Having regard to the distance of the site to European Sites, to the location of the site next to the coast and to the proposed discharge of treated wastewater and surface water to the stream that discharges to Courtmacsherry Bay, I consider that the relevant European Sites within the zone of influence are the following:

- Old Head of Kinsale SPA (Site Code 004021), located approximately 3km south,
- Courtmacsherry Bay SPA (Site Code 004219), located approximately 5.5km west,
- Courtmasherry Estuary SAC (Site Code 001230), located approximately 6km west, and
- Seven Heads SPA (Site Code 004191), located approximately 8km southwest.

8.2. I note the PA's conclusion that the development would not adversely affect the integrity of any European Site, in view of the sites' conservation objectives, is the incorrect test for screening for appropriate assessment. The Board are required to be satisfied that there would be no likely significant effects, either alone or in-combination with other plans or projects on a European Site, in view of the sites' conservation objectives.

8.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Having regard to the brownfield nature of the site which comprises of an unfinished structure.
- To the nature of the proposed development which seeks to upgrade an existing wastewater treatment plant to a capacity of 900PE.
- To the proposed discharge of treated wastewater to the stream to the west of the site which outfalls into Courtmacsherry Bay and to the level of dilution available within said Bay.
- To the discharge of surface water via a petrol interceptor and silt trap to an existing outfall pipe which discharges to the stream which outfalls into Courtmacsherry Bay and to the level of dilution available in said Bay.
- Having regard to the distance from the European Sites regarding any other potential ecological pathways and intervening lands.
- To the submitted CEMP which acknowledged that the site may have once been a location for breeding by a particular pair of Chough, which I note is a QI of the Seven Heads SPA approximately 8km from the site and to the conclusions from the ecology officer of the PA who noted that during the breeding season in 2023 Chough were utilising a ledge within the basement of the structure.
- To the technical note prepared by the Inspectorate Ecologist who is satisfied that the chough species are not connected to the Seven Heads SPA due to the 8km distance and to the home range radius/foraging range of breeding Chough being considered generally less than 2km. Therefore, likely significant effects on the qualifying interests of the Seven Heads SPA can be excluded.

8.4. I conclude that on the basis of objective information, that the development would not likely have a significant effect on any European Site, either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required. The Board should note that no measures intended to avoid or reduce harmful effects on European sites have been taken into account in reaching this conclusion.

9.0 Recommendation

I recommend that permission is **Granted**, subject to conditions, for the following reasons and considerations.

The Board should note that in general the PA conditions are reflected in my recommendation. However, with regards to condition 2 of the PA's notification to grant, which relates to a section 47 agreement, I have had regard to Section 7.6 of the 2007 Development Management Guidelines and have recommended Condition 2 below as an alternative as it is more definitive.

With regards to Condition 6 of the PA's notification to grant in relation to Chough, I have amended this condition as I have concerns regarding the scope and uncertainty as worded by the PA. In response I have recommended an alternative condition under Condition 5 below to manage such impacts during the construction phase.

10.0 Reasons and Considerations

Having regard to the location of the development within a strategic policy area under the Cork County Development Plan 2022-2028, to the pattern of development in the area, to the location of the development within a high value landscape next to a designated scenic route, to the planning history of the site, to the design and layout of the development within an unfinished site and to the proposed upgrade of an existing wastewater treatment plant, it is considered that, subject to the conditions set out below, that the development would not seriously injure the residential or visual amenities of the area, including from the protected views and prospects from the scenic route S67 to the sea and Courtmacsherry Bay, and would not be prejudicial to public health. It is, therefore, considered that the development would be in accordance with the policies and objectives of the Development Plan, including in particular objectives RP 5-27 (holiday home accommodation), TO 10-10 (tourist facilities), TO 10-11 (tourist accommodation), GI14-9(a) (landscape), GI 14-12 (general views and prospects), GI 14-13 (scenic routes), ZU 18-20 (special policy area) and X04, and therefore, would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 26th October 2023 and 14th September 2023, 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 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. (a) The entire complex shall be retained in single ownership.
(b) The proposed aparthotel apartment units shall be used only as short-stay tourist accommodation, with a maximum occupancy period of two months. The aparthotel units shall not be used as independent self-contained permanent residential units or student accommodation.

Reason: In the interest of orderly development and to protect residential amenities.

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

Reason: In the interest of the visual amenities of the area.

4. (a) A landscape scheme shall be submitted to the planning authority for their written approval prior to commencement of the development. Such scheme shall reduce the surface area of the hard surfaced external front terrace and replace with an area of soft landscaping between the proposed footpath and proposed terrace.

(b) The landscaping scheme agreed under 4(a) above shall be carried out within the first planting season following substantial completion of external

construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

5. Prior to commencement of development, an ornithological plan shall be submitted to the planning authority for their written agreement which details measures to be implemented to manage impacts on breeding Chough during site preparation works and the construction phase. The agreed plan shall be directed and supervised by an appropriately experienced ecologist.

Reason: To protect for the continued occurrence of Annex I and amber listed Chough within the development site.

6. (a) 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. No surface water from the site shall discharge onto the public road.

(b) All surface water during the construction phase shall be managed in accordance with the submitted stormwater management plan.

Reason: In the interest of public health.

7. (a) The wastewater treatment plant and disposal system shall be installed in accordance with the standards set out in the document entitled "Wastewater Treatment Manual Treatment Systems for Small Communities, Business, Leisure Centres and Hotels" – Environmental Protection Agency (EPA), 1999.

(b) Details of the feature that will restrict discharge to periods of high tide only, including adequate storage, shall comply with the detailed requirements of the planning authority and such details shall be submitted to the planning authority for their written approval prior to commencement of development.

(d) Details of the grease trap to be provided within the curtilage of the site shall be submitted to, and agreed in writing, with the planning authority prior to commencement of the development.

(c) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(d) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of three years and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

Reason: In the interest of public health.

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 final Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

10. Prior to commencement of the development, the developer shall submit to the planning authority for their written approval, plans and particulars that include for the recommendations set out in the submitted Inclusive Mobility Audit report, detailed construction drawings of 2 no. table top crossing points over entrances,

traffic calming measures along the public road frontage, pedestrian priority crossing point between the development and existing steps to beach, footpaths and advance warning signs and road markings. The development shall be completed in accordance with these agreed plans and particulars.

Reason: In the interest of pedestrian safety.

11. 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 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.

12. 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/installation of lighting. Such lighting shall be provided prior to the operation of the development.

Reason: In the interests of amenity and public safety.

13. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

14. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

15. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Reason: In the interest of visual amenity.

16. 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 the 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.

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.

Gary Farrelly
Planning Inspector

24th July 2024

Appendix 1

(a) Form 1: EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-318672-23		
Proposed Development Summary	The retention, modification and completion of a partially completed aparthotel to provide for a 20 bedroom hotel, 24 apartments, a bar and restaurant, and construction of upgrades to the existing wastewater treatment plant with associated works		
Development Address	Garrettstown Strand, Coolbane, Kinsale, County Cork		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X	Class 13 Wastewater treatment plants with a capacity exceeding 150,00PE. The proposed upgrade of the existing treatment plant will result in the plant being 900PE and therefore substantially below such limit.	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No			Conclusion No EIAR or Preliminary Examination required
Yes	X	Class 10(b)(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the	The subject site is within an urban area that measures 0.7 hectares, and Proceed to Q.4

	<p>case of other parts of a built-up area and 20 hectares elsewhere.</p> <p>Class 11(c) wastewater treatment plants with a capacity greater than 10,000PE</p> <p>Class 12(c) Holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.</p>	<p>the proposed development will comprise of 20 no. hotel beds and 24 no. aparthotel units.</p> <p>The proposed upgrade of the existing treatment plant will result in the plant being 900PE and therefore substantially below the 10,000PE limit.</p>	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

(b) Form 2 - EIA Preliminary Examination

The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any</p>	<p>The development is for the retention, modification and completion of an existing hotel development that is currently in an unfinished state.</p> <p>The development will consist of typical construction related activities and works. Development to be undertaken in accordance with a CEMP.</p> <p>Surface water to be discharged to a stream via a silt trap and petrol interceptor.</p>	No

<p>significant waste, emissions or pollutants?</p>	<p>The wastewater treatment plant will be upgraded and will be in accordance with EPA Code of Practice standards.</p>	
<p>Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The development site measures 0.7 hectares. The size of the development is not exceptional in the context of the existing environment. Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal and the Cork County Council's planning register, I note that there are no other plans or projects for potential significant cumulative effects on the environment.</p>	<p>No</p>
<p>Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The subject site is not located within any designated site. The nearest designated sites are Garrettstown Marsh, a proposed Natural Heritage Area (pNHA), located approximately 150 metres northwest of the site, and Garrylucas Marsh, also a pNHA, located approximately 350 metres east of the site. The nearest designated European Sites are the Old Head of Kinsale Special Protection Area (SPA) (Site Code 004021), which is located approximately 3km south, and Courtmacsherry Bay SPA (Site Code 004219), which is located approximately 5.5km west. The Courtmacsherry Estuary Special Area of Conservation (SAC) (Site Code 001230) is located approximately 6km west and the Seven Heads SPA (Site Code 004191) is located approximately 8km southwest. My Appropriate Assessment screening undertaken concludes that the proposed development would not likely have a significant effect on any European Site. The subject site is located outside Flood Zones A and B for coastal or fluvial flooding.</p>	<p>No</p>

Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: _____

Date: 24th July 2024

Gary Farrelly

Appendix 2: Technical Note: Inspectorate Ecologist