



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-321171-24

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<b>Development</b>	Change of use from commercial to residential; construction of 8 apartments and all associated site works.
<b>Location</b>	Pebble Beach, Riverstown, Tramore, Co. Waterford, X91 KP66.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	2360519
<b>Applicant(s)</b>	Oakshade Holdings Limited
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant permission w. Conditions
<b>Type of Appeal</b>	Third Party v Decision
<b>Appellant(s)</b>	Mary Egan & Other
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> June 2025
<b>Inspector</b>	Dan Aspell

## **1.0 Site Location and Description**

- 1.1.1. The site address is given as Pebble Beach, Riverstown, Tramore, Co. Waterford. There is an existing 2- and part 3-storey premises on site. The premises is vacant and in a state of disrepair. There is parking to the front and amenity space to rear.
- 1.1.2. The site is accessed off Lakelands road. Single-storey bungalows are to the east of the site, and across Lakelands road to the north. There is open space and a playground to the west. Lakelands Park open space extends to the south.
- 1.1.3. Part of the ground floor of the premises is described in the application as a creche.
- 1.1.4. The premises and adjacent bungalows appear to form parts of the Pebble Beach holiday home development, for which I consider the subject premises historically provided services such as creche, mini-market, storage and reception.

## **2.0 Proposed Development**

- 2.1.1. The proposed development as revised at further information stage generally comprises the extension and change of use of part of the existing premises and the development of 8 no. new apartments, as follows:
  - change of use of part of ground floor from commercial to residential, to provide 3 no. apartments;
  - new 3<sup>rd</sup> floor to provide 5 no. apartments;
  - internal alterations incl. to layout of 2 no. existing apartments at 1<sup>st</sup> floor;
  - new 3-storey extension to front to provide stairwell/lift;
  - modifications to existing facades;
  - retention of modifications to existing external windows and doors;
  - all associated site development and site services.
- 2.1.2. The part of the ground floor described as comprising a creche is stated as being excluded from the application area. The submitted drawings indicate the existing first-floor comprises 4 no. apartments, with works proposed to alter part of the layout of that floor; as such the proposed development would provide for 8 no. additional apartments. Part of the first-floor is also excluded from the application area.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. At a plenary meeting of Waterford City & County Council held on 10<sup>th</sup> October 2024, a resolution was passed that **materially contravened** the Waterford City & County Council Development Plan 2022-2028 in deciding to grant permission for the development. Waterford City and County Council issued (dated 11/10/2024) a notification of decision to grant permission subject to 12 no. Conditions. I note the following:

- Condition 2 required agreement with the Planning Authority of a revised ground floor plan to indicate omission of a portion of internal floor area adjoining the creche and amendment of affected apartments, as follows:

*“Prior to the commencement of development a revised ground floor plan shall be submitted to, and agreed in writing with, the Planning Authority indicating the following:-*

*(a) The internal floor area adjoining the creche (as granted under planning reference 99/920) which provided a ‘baby changing’ area & 3 no. of W.C., and a section of entrance hall and an internal hall door closest to the creche as per the approved plans associated with planning reference 99/920 is expressly omitted from the development permitted herein. Apartment B and Apartment C as identified on the proposed floor plans submitted to the Planning Authority on the 16th July 2024, Drw No. Fi-14, shall be amended accordingly to take account of this revision. The revised floor areas, room sizes, storages areas etc. of Apartment B and Apartment C shall comply with the ‘Guidelines for Planning Authorities - Design Standards for New Apartments (July 2023)’.”*

*Reason: Having regard to the planning history on site, to ensure adequate facilities are retained for the permitted crèche use and in the interest of the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

3.2.1. Planning reports: Three Planner Reports are on file (dated 13<sup>th</sup> December 2023, 9<sup>th</sup> August 2024, and 19<sup>th</sup> September 2024). I note the following:

Report dates 13<sup>th</sup> Dec. 2023:

- Land Use: Report stated site is on lands zoned 'tourism'. The building was originally permitted (Reg. Ref. 99/920) as a reception area, mini-market, creche, restaurant & stores serving a holiday home development in the location;
- Zoning: The zoning is 'To provide for tourist uses'. A 'residential scheme' is not permissible. There are holiday apartments on the site (Ref. 07/248) and there would be a potential conflict with the proposed residential apartments;
- Tourism: Report acknowledges housing demand but stated tourism plays an important role in the economy of Tramore as per Policy Objective ECON 24. Site forms part of a larger holiday home development on lands zoned 'tourism'. The commercial elements of the building are vacant. Change of use to holiday apartments may be appropriate. Site is not suitable for permanent residential use;
- Unauthorised development: The existing 1<sup>st</sup>- and 2<sup>nd</sup>-floor do not accord with permitted plans (Ref. 07/248). Report states it is not clear if permission 07/248 was implemented. The proposed development will consolidate unauthorised development. The areas included at first floor level impacts the permitted layout under 07/248;
- Apartments: Apartments must comply with the 2022 Apartment Guidelines. Two of the proposed apartments fall short of the required areas. The storage area for one apartment is less than required. The amenity space for serve the development is not suitably enclosed. The 3 no. ground floor apartments do not have identified private amenity space; a ground floor terrace could be provided. No bin storage is identified. No cycle parking is provided;
- Conclusion: Proposed residential apartment does not accord zoning objective, and given the planning history and details submitted the proposal may consolidate unauthorised development. Further information recommended.

Report dated 9<sup>th</sup> August 2024 (entitled 'Part 2'):

- Layout; Report stated the response to further information amended the existing floor plans to match that as permitted under Reg. Ref. 07/248;
- Proposed use: Report notes that the Further Information response states this matter has been addressed at Councillor level;
- Layout: Bin storage and cycle parking have been identified. Bin storage is slightly below required provision. All proposed apartments are increased to 2-bed 4-person units and include balconies. Natural lighting has been improved;
- Water: Confirmation of Feasibility provided. Surface water details can be addressed by condition;
- Land ownership: Report stated a 3<sup>rd</sup> party submission included folio details which include 3 no. w.cs. and a small hall area within their folio. The further information response did not address the folio details but stated there is no encroachment on 3<sup>rd</sup> party lands. It stated the submitted land registry details did not clearly show the area in question as part of the developer's folio. The report stated that notwithstanding, the loss of what would have been at the very least shared facilities at ground floor level, that is, solely for the creche and/or for the creche and previously permitted reception room, would constitute a substandard form of development. Report stated the layout can be revised by condition to retain the 3 no. w.cs., which may result in two of the three ground floor apartments changing from 2-bed units to 2-bed units;
- Conclusion: A residential scheme is not permissible on tourism lands. Recommends permission be refused on grounds the proposed change of use and construction of additional floor to provide for residential apartments for permanent occupation would set an undesirable precedent for non-tourism uses on tourism lands and would contravene materially the development plan;
- The report included a section entitled 'Additional Report of Senior Executive Planner', summarise as follows:
- It stated that given the building is located within a holiday complex of existing tourism related holiday accommodation, and the pressure on existing tourist accommodation in Tramore, and the need to protect and develop the tourist

offering in Tramore whose economy relies heavily on tourism and serves as a regional attractor for the County/wider area, permission to convert the building to permanent residential development is not recommended;

- It also stated there would not be an objection to conversion of the building to tourist accommodation. It concluded that if the Planning Authority decides to consider granting permission it would necessitate a material contravention of the Development Plan which is Reserved Function of the Elected Members of the City & County Council, and notice must be given under Section 34(6) of the Act;

I note that a handwritten note attributed to the Acting Director of Services at the end of report states “Proceed to material contravention”.

Report dated 19<sup>th</sup> September 2024 (entitled ‘Part 3’);

- Regarding material contravention, report stated that notice was given in accordance with Section 34(6) that the City & County Council intended to considering deciding to grant permission for the development. Report stated the development would materially contravene the land use zoning objective for the area. It stated a public notice was advertised in accordance with Section 34(6) and no submissions or observation were received. Report concluded: *“it is the recommendation that the Waterford City & County Development Plan 2022 -2028 be materially contravened in order to grant permission for the proposed development”*. The report set out conditions to be attached in the event the grant of permission is approved.

#### Other Technical Reports

- 3.2.2. Housing: No report on file.
- 3.2.3. Roads: Report stated that it had no comment to make.
- 3.2.4. Water Services: No objection subject to conditions.
- 3.2.5. Environment Section: Report stated no objection subject to conditions relating to bin storage details and preparation of a Construction and Demolition Waste Management Plan (RWMP).
- 3.2.6. Fire Authority: Report dated 27<sup>th</sup> November 2023 on file.

### **3.3. Prescribed Bodies**

- 3.3.1. Irish Water: Water and wastewater connections feasible without upgrades.

### **3.4. Third Party Observations**

- 3.4.1. One third-party observer (Mary Egan and Donal Blackwell) made two observations at planning application stage. The observations stated the development would encroach on the observers' property (referred to as 'The Creche') within the ground floor of the premises. The observations indicated the relevant area and stated that no consent for same had been sought or granted. The observations also stated the drawings submitted did not represent the existing configuration.

## **4.0 Planning History**

### **4.1. Subject site**

- 4.1.1. Reg. Ref. 15/201: Planning permission granted by the Planning Authority in 2015 for change of use from shop and office/laundry to 3 no. apartments at ground floor and for modifications to elevations. The applicant confirmed the apartments would serve as a holiday home development for tourist related residential purposes.
- 4.1.2. Condition No. 6 of the permission stated the development shall serve as a holiday home development and be used for tourism related residential purposes and that no apartments be used as a permanent place of residence.
- 4.1.3. Having compared this permission and the subject application it appears this permission was not implemented.
- 4.1.4. Reg. Ref. 07/248: Planning permission granted by the Planning Authority in 2007 for change of use from restaurant to 4 no. holiday apartments, on the ground, first and second floors, additional balcony, elevational changes and ancillary site works.
- 4.1.5. Condition No. 8 of the permission stated the development shall serve as a holiday home development and be used for tourism related residential purposes only and that no apartments shall be used as a permanent place of residence. Condition No. 8 also required the management company enter into an agreement with the owners/occupiers of the individual units in this regard.

- 4.1.6. Having compared this permission and the subject application it appears this permission was implemented.
- 4.1.7. Reg. Refs. 04/1254, 02/33, and 99/920: I note the Planning Authority Planner Report also refers to the planning applications Reg. Ref. 04/1254, 02/33, and 99/920. Given the age of the applications and the lack of information on the case file and on the available public record I do not set out further details of these cases, however for completeness I note that Reg. Ref. 04/1254 related to the change of use from creche to 1 no. two bedroom apartment, and that permission was granted subject to conditions.

4.2. **Nearby sites:**

- 4.2.1. None.

## 5.0 **Policy Context**

### 5.1. **National guidelines, strategies and Circulars**

National Planning Framework, as revised 2025.

Sustainable Residential Development & Compact Settlements 2024 and Appendices

National Biodiversity Action Plan 2023, including its Objectives and Targets.

Design Standards for New Apartments – Guidelines for Planning Authorities 2023, and Circular Letters NSP 03/25 and NSP 04/2025.

### 5.2. **Regional Spatial and Economic Strategy**

Section 3.3 'Guiding Principles' indicates the Guiding Principles for the Waterford MASP include *"Recognising the City's People as the heart of the City's potential and utilizing key assets, particularly the river and estuarial location, linkages by sea and air, the, the history/heritage and tourist attractions of Waterford, Dunmore East and Tramore"*.

RPO 53 'Tourism' states: *"It is an objective to:*



- 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;*
- b. Promote activity tourism subject to subject to appropriate site selection and environmental assessment processes; ...*
- d. Sustainably develop walking and cycling trails opening greater accessibility to the marine and countryside environment by sustainable modes and promote the sustainable designation and delivery of Greenway and Blueway Corridors.*
- e. Facilitate appropriate tourism development and in particular a National Greenways, Blueways and Peatways Strategy, prioritising sustainable projects that achieve maximum impact and connectivity at national and regional level; ...*
- g. Support the relevant authorities in the development of specific monitoring protocols for visitor pressure to ensure that tourism activities are maintained within sustainable limits for the European sites in the Region.”*

### **5.3. Development Plan**

- 5.3.1. The site is zoned ‘TM–Tourism’ where the zoning objective is ‘*To provide for tourist uses*’.
- 5.3.2. Development Plan Table 11.2 ‘Zoning Matrix’ indicates that ‘Dwelling / Principal Private Residence’ is open for consideration but that ‘Residential Scheme’ is not permitted. The matrix also indicates that: ‘Bed & Breakfast / Guesthouse’ and Hostel are open for consideration; ‘Hotel / Tourist Accommodation’ is permissible in principle; ‘Nursing Home / Assisted Living’, ‘Student Accommodation’ and ‘Traveller Accommodation’ are not permitted.
- 5.3.3. In relation to tourism, I note the Development Plan Core Strategy including Section 2.1 ‘Core Strategy Strategic Aims’ No. 13 which seeks: “*To acknowledge the vital importance of the tourism sector to economic development and ccontinue to encourage and promote the sustainable development of a range of quality tourism facilities, attractions and accommodation types across Waterford*”.
- 5.3.4. I also note Chapter 4 ‘Economy, Tourism, Education and Retail’. Policy Objective ECON 24 ‘Tourism Accommodation states: “*We will continue to support the*

*development of a variety of accommodation types at appropriate locations throughout Waterford City and County (hotels, B&Bs, Guest Houses, self-catering, caravan & camping, glamping etc), which can improve the economic potential of increased visitor revenue, increase dwell time and meet visitor needs. Tourist accommodation should generally be located within towns and villages (unless otherwise justified to the satisfaction of the Planning Authority) and developed with the principles of universal design to ensure they are accessible for all”.*

- 5.3.5. In relation to housing and residential development I note the Development Plan Core Strategy including Section 2.1 ‘Core Strategy Strategic Aims’ No. 3 which seeks to: *“Counteract imbalances in housing type, tenure and location both within settlements, between settlements and across broader rural areas in order to meet the needs of the people of Waterford, mitigating current residential leakage and unsustainable travel patterns”.*
- 5.3.6. Development Plan Table 2.4 ‘Core Strategy Table’ indicates sufficient land is identified in the County and in Tramore to facilitate the achievement of Housing Targets. I also note General Housing Policy Objectives H01 and H07 in relation to housing provision and the supply of housing land. I further note Development Plan Appendix 3 ‘Waterford Housing Strategy and Housing Need Demand Assessment’.
- 5.3.7. General Housing Policy Objective H 04: *“We will promote and facilitate sustainable and liveable compact urban growth through the thoughtful consolidation and of infill/ brownfield sites in a way which promotes appropriate levels of compactness while delivering healthier and greener urban spaces and residential amenities. This will be achieved by:*
- Facilitating and supporting a range of residential densities and building heights appropriate to the context and residential amenity of a proposed development location.*
  - Proximity to high capacity public transport corridors and investment in sustainable and/ or active transport infrastructure.*
  - Supporting the permeable integration and densification of existing built-up areas.*

- *Supporting residential development proposals and urban design which incorporate clustering of mixed land use and co-location of services in appropriate location(s), or where quick and easy access to such services is available.*
- *Promoting and ensuring qualitative design and technological solutions which deliver adaptable residential/living units/spaces and urban design.*
- *Ensuring the integrated provision of quality green and blue infrastructure components/ public open space and networks of same so as to achieve distinctiveness and sense of place across our neighbourhoods, and;*
- *Requiring the provision of support infrastructure/ facilities to encourage sustainable mobility”.*

5.3.8. General Housing Policy Objective H 07: *“We will secure the implementation of the Waterford City and County Housing Strategy and Housing Need and Demand Assessment (HNDA) in accordance with the provision of national legislation and relevant policies and standards through:*

- *Zoning of sufficient land to cater for the housing need of our communities over the life of the Development Plan, having regard to the Core Strategy, the likely release of development lands to the market and service availability.*
- *The purchase of lands/delivery of houses in line with obligations as a Housing Authority in collaboration with stakeholders and private and non-profit sectors, including Community Trusts/ Housing Agencies/ Developers/ Land Development Agency”.*

#### **5.4. Natural Heritage Designations**

5.4.1. Tramore Back Strand SPA is approximately 695m to the east and Tramore Dunes and Backstrand SAC is approximately 895m to the north-east.

## **6.0 Environmental Impact Assessment screening**

6.1.1. The proposed development has been subject to preliminary examination for environment impact assessment (See Form 1 & 2 Appendix 1 of this report). Having regard to the characteristics and location of the development and the types and

characteristics of potential impacts, I consider that there is no real likelihood of significant effects on the environment. The development, therefore, does not trigger requirement for EIA screening and an EIAR is not required.

## 7.0 The Appeal

### 7.1. Grounds of Third-Party Appeal

7.1.1. A third-party appeal was received on behalf of Mary Egan and Donal Blackwell, stated as owners of 'The Creche', Ground Floor, Pebble Beach, the main points of which are summarised as follows:

- Application should be rejected on grounds of (1) being invalid; (2) flawed decision making; and (3) Condition 2 being *ultra vires*;
- Invalid application: Application provided for development that encroached the appellant's property. Applicant did not obtain permission to make the application and as such the application is invalid;
- Flawed decision making: The planning report recommended refusal on grounds of the site being zoned 'tourism' and that the change of use and construction of an additional floor would be incompatible with the pattern of uses in the area. This was endorsed by the senior executive planner report. Without giving reasons the Director of Services indicated on the planning report for the application to 'proceed to material contravention'. This is inexplicable, inappropriate and unprecedented;
- Condition 2: Condition 2 requires a revised ground floor plan be submitted to and agreed in writing with Planning Authority seeking removal of the appellant's property from the proposed development, and for redesign of the layout for the baby changing area and 3 no. w.c's. and a section of the entrance hall and internal hall door be omitted from the development. This confirms the Planning Authority knowledge the application included the appellant's property without permission which makes the application invalid. The redesign should be subject to a new application as the applicant can now redesign the development by condition with no consultation with the public or appellants. This omits the appellants from the planning process and is *ultra vires*.

7.1.2. The appeal includes land registry information relating to the site.

## **7.2. First-Party Response to Third-Party Appeal**

7.2.1. None.

## **7.3. Planning Authority Response**

7.3.1. None.

## **7.4. Observations**

7.4.1. None.

## **8.0 Assessment**

8.1.1. Having regard to the foregoing; having examined the application, appeal, Planning Authority reports, and all other documentation on file including all of the submissions received in relation to the appeal; and having inspected the area within and around the site; and having regard to relevant local, regional and national policies, objectives and guidance, I consider the main issues in this appeal are as follows:

- Principle of development;
- Material contravention;
- Condition 2;
- Related matters raised in the course of the appeal.

## **8.2. Principle of Development**

- 8.2.1. The appeal states the Planning Authority Planner Report recommended refusal on grounds of the site being zoned for tourism, and that the change of use and construction of an additional floor would be incompatible with the pattern of uses in the area. It states that no reason was given for the application to proceed to material contravention, and that this was inexplicable, inappropriate and unprecedented.
- 8.2.2. The application notices described the development as being for the provision of apartments. The application form stated the proposed use is 'residential use – new

apartments'. The Planning Authority Planner Reports state variously that the development was for residential apartments, permanent residential use, and residential apartments for permanent occupation. This matter was raised by the Planning Authority in Further Information Request Item No. 2. In response the applicant improved the size, and internal and external provision of the apartments to meet the requirements of the Apartment Guidelines. Whilst the response did not directly address the proposed use, at no point did the applicant dispute the Planning Authority points that the apartments were for permanent residential occupation and not for tourist purposes.

- 8.2.3. The Planner Reports also stated that a 'residential scheme' is not permissible in this zone. The senior executive planner (SEP) section of the report stated that there would not be an objection to conversion of the building to tourist accommodation.
- 8.2.4. The Chief Executive Report to the Members of the Plenary Council is on the case file. It stated the development would materially contravene the '*To provide for tourist uses*' zoning objective. The report referenced the Core Strategy Aims and Development Plan Section 2.1. It stated the development is consistent with General Housing Objectives H04 and H17; would support the Housing Strategy and Housing Needs Demand Assessment; and would be consistent with the Development Plan, Ministerial Guidance, Regional Spatial and Economic Strategy for the area.
- 8.2.5. No response to the appeal was received by the Commission from the applicant.

#### *Assessment*

- 8.2.6. The site is zoned 'TM – Tourism' where the zoning objective is '*To provide for tourist uses*'. Development Plan Table 11.2 'Zoning Matrix' indicates that 'Dwelling / Principal Private Residence' is open for consideration but that 'Residential Scheme' is Not Permitted. 'Residential Scheme' is not defined in the Development Plan.
- 8.2.7. I am satisfied the Development Plan draws a distinction between a single dwelling / principal private residence and a residential scheme, which the Plan discusses as comprising more than a single unit. The proposed development is not a single dwelling / principal private residence, and comprises the provision of 8 no. new apartments for residential use.
- 8.2.8. Having regard to the foregoing, and to the information on file, I am satisfied the apartments as proposed are to be residential and not tourist accommodation; that

the Development Plan is sufficiently clear in this regard; that there is a material difference between the relevant uses; and that the development would be contrary to Table 11.1 'Zoning Matrix' and the Core Strategy. I concur with the Planning Authority in this regard, and I am satisfied that the development of 8 no. apartments as proposed would contravene materially the 'TM' land use zoning objective for the area as set out in the Development Plan.

### 8.3. **Material Contravention**

- 8.3.1. The appellant states there was a flawed decision-making process, specifically raising issue with aspects of the Planning Authority Planner Reports recommendation to proceed to Material Contravention.

#### *Planning Authority Decision*

- 8.3.2. I note the provisions of the Planning & Development Act 2000 (as amended) in this regard, including regarding the Material Contravention process under Section 34(6).
- 8.3.3. I have reviewed the documents within the Commission case file and publicly available records on the City & County Council website relating to the Material Contravention. This includes the Planning Authority Planner Reports and internal reports, as well as the City & County Council meeting Agenda (dated 3<sup>rd</sup> October 2024) and Draft Minutes (dated 10<sup>th</sup> October 2024). I note the following:
- A written comment, as the appeal states, within the Planning Authority Planner Report dated 9<sup>th</sup> August 2024 (entitled 'Part 2') attributed to the Acting Director of Services stated "Proceed to material contravention";
  - The Commission case file includes the public notice of the proposed material contravention of the zoning objective. It also includes the Chief Executive (CE) Report for the Material Contravention; it states that no submissions/observations were received during the notice period for the material contravention. The Chief Executive Order (2024/2,885) on the case file directs for the CE Report and Planner's report to be circulated to the members of Waterford City and County Council in advance of Plenary meeting on 10th October, 2024. The CE Report sets out reasons and considerations for the material contravention; refers to relevant local, regional

and national policy; and recommends the Development Plan be materially contravened by resolution;

- Minutes of Council Meeting 10<sup>th</sup> October 2024 are on the Council website and record consideration and voting on the Material Contravention Motion. A copy of the Resolution of the Elected Members is also on the online public record. It states that it is the certified resolution of the Council that the Waterford City & County Development Plan be contravened to allow the Council to grant permission Ref. 23/60615 subject to conditions.

8.3.4. Subsequent to the Plenary meeting of, and unanimous resolution passed by, Waterford City & County Council on 10<sup>th</sup> October 2024, a Notification of Decision to Grant Permission subject to conditions was issued 11<sup>th</sup> October 2024. The Decision stated that it is the recommendation that the Waterford City & County Development Plan 2022 -2028 be materially contravened in order to grant permission for the proposed development.

8.3.5. I note however that I see no record of the following requirements of the Material Contravention process on the Commission case file:

- A copy of the notice sent to the observers to the application (Mary Egan and Donal Blackwell);
- A copy of the notice sent to the Office of the Planning Regulator (OPR), or notification of the decision on same for the OPR.

I further note that whilst the Managers Order (2024/2,885) and Council Meeting Minutes refer to *Material Contravention*, the Resolution refers only to *contravention*. In addition, I note the Minutes of Council Meeting 10/10/2024 on the Council website which record consideration and voting on the Material Contravention Motion are entitled as *Draft* minutes. Should it see fit, the Commission may be inclined to seek submissions from the Planning Authority in relation to these matters, however, I am satisfied that the permission materially contravened the Development Plan.

#### *Additional considerations*

8.3.6. I have had due regard to the relevant national, regional and local policies and objectives in relation to both housing and tourism, including in relation to Tramore and the wider County. In relation to housing, I have had particular regard to the



provisions of the Development Plan in relation to the supply of housing and housing land; the Core Strategy; Housing Strategy and Housing Need & Demand Assessment. I note that Development Plan Table 2.4 'Core Strategy Table' indicates that sufficient land is identified in the County and in Tramore to facilitate the achievement of Housing Targets.

*Appeal to the Board*

8.3.7. **Section 37(2)(a)** of the Planning & Development Act 2000 (as amended) provides for the Board in determining an appeal to grant permission even if the proposed development contravenes materially the development plan. Section 37(2)(b) states that where a Planning Authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph 37(2)(a) in specific circumstances. Whilst Section 37(2) of the Act reads that subsection (b) applies only where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, a broader interpretation has been taken by the Courts. As such, whilst in the subject case the Planning Authority did not refuse permission, I consider Section 37(2)(a) and (b) should be applied in this case.

8.3.8. I have considered the proposed development against the criteria of subsection (b) of Section 37(2). I summarise my considerations in this regard as follows:

- (i) I do not consider the proposed development is of strategic or national importance on account of its scale and nature;
- (iii) I do not consider permission for the development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government. In this regard, having reviewed the relevant provisions and documents in this regard I see no grounds to grant permission on this basis;
- (iv) I do not consider permission for the development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan. In this latter regard I see no

significant changes to the pattern of development in the area since the making of the plan.

- 8.3.9. In relation to criterion (ii) (“there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned”), I have had due regard to the fact that ‘Residential Scheme’ is not defined in the Plan, however as set out above I am satisfied that on balance the Development Plan is sufficiently clear in this regard. I am satisfied that the development amounts to a ‘residential scheme’ and that the development as proposed would contravene materially the land use zoning objective of the Development Plan.
- 8.3.10. Accordingly, whilst I acknowledge the site is vacant; the similarities between the proposed use and the permissible uses on the site; and the unanimous Resolution of the Elected Members of Waterford City & County Council, I am satisfied that having regard to the provisions of the Planning & Development Act Section 37(2) and the related interpretations in case law by the Courts, that the Commission should not grant permission for the proposed development. Given that the nature of the proposed development which would materially contravene the land use zoning objective of the Development Plan I am satisfied the Commission should refuse permission on this basis.
- 8.3.11. Should the Commission be minded to grant permission, I address below the outstanding matters raised in the appeal.

#### **8.4. Condition 2**

- 8.4.1. The appeal states the application provided for development that encroached the appellant’s property, and that the applicant did not approach or obtain permission to make the application. It states that the redesign required by Condition 2 attached by the Planning Authority should be subject to a new application as, if dealt with by condition, the applicant can redesign the development with no consultation with the public or appellants. The appeal states the condition is *ultra vires*. I note their observation stated the internal layout indicated in the application was inaccurate.
- 8.4.2. Condition 2 of the Planning Authority decision addressed this matter. I set out above the wording of Condition 2 and note it requires a revised ground floor plan to be

agreed with Planning Authority indicating the internal floor area adjoining the creche as granted under Reg. Ref. 99/920. The reason for the condition was to ensure adequate facilities are retained for the permitted crèche use and the proper planning and sustainable development of the area.

8.4.3. The Drawings and plans associated with Reg. Ref. 99/920 are not on the Commission case file or the available public record, and as such I am unable to verify if Condition 2 as drafted would resolve the appellants concerns in this regard.

8.4.4. Access to the internal areas of the premises was not available at the time of my site visit. No appeal or response to appeal was received from the applicant.

#### *Land ownership*

8.4.5. The appeal includes a copy of a Transfer of Property, linked to a Folio. It refers to a property shown on a map annexed and outlined in red. An untitled layout plan of the ground floor of the subject premises is shown which indicates a part of the internal ground floor and a part of the external area at ground floor in red.

8.4.6. The application drawings show the majority of the creche area as being excluded from the application (that is, the hexagonally shaped area at ground floor). The disputed area relates to a part of the ground floor internal area generally comprising circulation and toilets adjacent the hexagonal area within the building. I see no letter of authorisation with the application from the appellant.

8.4.7. Further Information Item no. 8 requested the applicant demonstrate sufficient legal interest to undertake all works on site. The request stated for the applicant to note the observation on file in relation to ownership of an area at ground floor the proposed development overlaps with. The response to further information stated there is no encroachment on any 3rd party property. The response stated that *"This unit previously operated as a creche at ground floor and owned by a 3rd party, has no interest in the areas noted on their submission, nor any right of access to same, as advised by ... Oakshade Holdings Ltd., the owners of the rest of the property and adjacent grounds"*. The response referred to maps in this regard, which relate to Folio WD37719F.

8.4.8. I note the untitled layout plan submitted by the appellant and the existing ground floor plan submitted by the applicant in response to further information (Drawing No. FI-12) do not match, however the appellant's untitled layout and the ground floor

drawing submitted at application stage (Drawing No. S-01) do match. Both sets of drawings however include the relevant area of floorspace and propose works to it.

#### *Assessment*

- 8.4.9. The appellant and applicant dispute ownership of part of the internal area of the building. This area measures approximately 10sqm. The disputed area excludes the 'hexagonal' creche area which is also excluded from the application.
- 8.4.10. The initial drawings submitted with the application generally matched the layout of this area indicated by the appellant and also the layout of this area permitted as part of planning permission Reg. Ref. 07/248. This part of the internal layout also generally matches that shown in Reg. Ref. 15/201. The subsequent drawings submitted at further information in the subject case show however that the current building layout does not accord with that permitted under Reg. Ref. 07/248. The Planning Authority planner reports referred to the existing layout which did not accord with Reg. Ref. 07248 as unauthorised.
- 8.4.11. The disputed area was and is shown as being directly accessible from the creche area, and in the two previous applications it was shown as providing internal access from the creche to the building including to the adjacent toilets.
- 8.4.12. I do not consider either party has satisfactorily demonstrated ownership of the disputed area. The Commission may be inclined to seek further submissions from both parties in this regard. On balance however I am inclined to concur with the Planning Authority that the appellant has provided competing evidence of interest, and I am satisfied that access to services for the creche space should be maintained without unduly disrupting the proposed layout.
- 8.4.13. Regarding the legal status of this area within the property, Section 34(13) of the Planning & Development Act as amended states that a person shall not be entitled solely by reason of a permission to carry out any development. For the purposes of planning permission, I am satisfied that, on balance, there is no legal impediment to the Commission granting planning permission in this regard, subject to appropriate condition. Given the information on file, I consider that a revised version of Condition 2 as attached by the Planning Authority is warranted, to include reference to Reg. Ref. 07/248 rather than Reg. Ref. 99/920. The layout of that permission generally accorded with the area indicated by the appellant. I consider that this satisfactorily

addresses the concerns of the appellant, and provides sufficient certainty of outcome in this regard. As stated by the Planning Authority I consider that the reason for this condition is that, on grounds of the available information on file, there is a need to ensure adequate facilities are retained for the permitted crèche use indicated in the application.

#### **8.5. Related matters raised in the course of the appeal**

##### Apartment standards

- 8.5.1. Whilst not raised in the appeal, Condition 2 attached by the Planning Authority would require further alteration to the layout and size of proposed apartments on that floor to ensure the revised layouts met the relevant requirements of the Apartment Guidelines. Should the Commission be minded to grant permission I am satisfied the proposed apartments generally meet the relevant requirements of the County Development Plan and Apartment Guidelines 2023, subject to the attachment of a revised version of Condition 2 as set out above.

##### Extension, alterations, and Retention of alterations

- 8.5.2. Having reviewed the information on file and having visited the site, I am generally satisfied the proposed extensions and alterations, and the retention of alterations, are generally acceptable, subject to conditions requiring agreement of a Construction Management Plan and Construction and Demolition Waste Management Plan in the interests of the amenity of adjacent bungalows. However, given the that the works are integral to the proposed residential apartments I do not consider that permission should be granted for any of these elements in isolation.

##### Development description

- 8.5.3. Regarding the development description, whilst the building is vacant and in a state of disrepair, the submitted plans indicate the first-floor is generally as permitted under Reg. Ref. 07/248. That permission was for holiday apartments / holiday home development for tourism related residential purposes. It is unclear from the available information if that permission was fully implemented, and if so, if those uses were extinguished. As such, I consider it unclear if the proposed development is to change the use from holiday apartments to residential use apartments.

## Conditions

- 8.5.4. Should the Commission be minded to grant permission, in addition to the foregoing I also consider standard conditions in relation to Irish Water/Uisce Eireann, Management Company, surface water management, and Contributions are required.

## **9.0 Appropriate Assessment screening**

- 9.1.1. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Sites including the Tramore Back Strand SPA and Tramore Dunes and Backstrand SAC in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required. This determination is based on the nature of the proposed works and the location and distance from nearest European site and lack of connections.

## **10.0 Water Framework Directive screening**

- 10.1.1. The site is located approximately 95m north of a small lake (referred to in EPA mapping as 'unnamed lake') within 'Lakelands' park. The proposed development comprises extension and change of use from commercial to residential and the construction of 8 apartments and all associated site works. No water deterioration concerns were raised in the planning appeal. I have assessed the extension and change of use development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status, and prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively, or otherwise jeopardise any water body in reaching its WFD objectives. The reason for this conclusion is: the nature of works e.g. small scale and nature of the development; the location-distance from nearest water bodies and/or lack of hydrological connections. Taking into account WFD screening

determination by Planning Authority, I conclude that on the basis of objective information, the proposed development will not result in a risk of deterioration on any water body either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

## 11.0 Recommendation

11.1.1. I recommend permission be **Refused** for the reasons and consideration below.

## 12.0 Reasons and Considerations

Having regard to the location of the site within an area zoned 'TM – Tourism' in the Waterford City & Count Development Plan 2022-2028, where the land use zoning objective is "To provide for tourist uses"; and having regard to Development Plan Table 11.2 'Zoning Matrix' which states that a 'residential scheme' is not permitted in the 'TM' land use zoning area; it is considered that the nature of the development of apartments for residential use as proposed would be incompatible with the area and would materially contravene the land use zoning objective 'To provide for tourist uses' of the Waterford City & Count Development Plan 2022-2028, and, accordingly, would be contrary to the proper planning and sustainable development of the area.

*-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.-*

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Dan Aspell  
Inspector  
21<sup>ST</sup> July 2025

## APPENDIX 1

### Form 1: EIA Pre-Screening

<b>Case Reference</b>	ABP-321171-24
<b>Proposed Development Summary</b>	Extension and change of use from commercial to residential; construction of 8 apartments and all associated site works
<b>Development Address</b>	Pebble Beach, Riverstown, Tramore, Co. Waterford
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>	
	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. <b>Proceed to Q3</b>	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. <b>No Screening required.</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. <b>EIA is Mandatory. No Screening Required.</b>	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. <b>Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	Class 10(b)(iv) Urban development.
<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	
<b>Yes</b> <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
<b>No</b> <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

Inspector: \_\_\_\_\_ Date: \_\_ 17<sup>th</sup> July 2025\_\_



## Form 2: EIA Preliminary Examination

<b>Case Reference</b>	ABP-321171-24
<b>Proposed Development Summary</b>	Extension and change of use from commercial to residential; construction of 8 apartments and all associated site works
<b>Development Address</b>	Pebble Beach, Riverstown, Tramore, Co. Waterford
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>	Proposed development comprises the extension and change of use and extension of a commercial premises for the provision of apartments in an urban area. The proposed development has a modest footprint, comes forward as a standalone project, requires minimal demolition works, does not require the use of substantial natural resources, or give rise to production of significant waste, significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, human health or is vulnerable to climate change.
<b>Location of development</b>	The development is located in an urban area within a town. The receiving location is not particularly environmentally sensitive and is removed from sensitive natural habitats, designated sites and identified landscapes of significance in the County Development Plan. The site is of not of heritage or cultural significance. Given the scale and nature of development proposed there will be no significant environmental effects arising.
<b>Types and characteristics of potential impacts</b>	Having regard to the characteristics and modest nature of the proposed development, the sensitivity of its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
<b>Conclusion</b>	
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.

**Inspector:** \_\_\_\_\_ **Date:** 17<sup>th</sup> July 2025

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## APPENDIX 2

Screening for Appropriate Assessment - Test for likely significant effects				
<b>Step 1: Description of the project and local site characteristics</b>				
<b>Brief description of project</b>	Extension and change of use from commercial to residential; construction of extension and 8 apartments and all associated site works			
<b>Brief description of development site characteristics and potential impact mechanisms</b>	Site measures 0.458ha and comprises a commercial premises, amenity space and parking. Tramore Back Strand SPA is approximately 695m to the east and Tramore Dunes and Backstrand SAC is approximately 895m to the north-east			
<b>Screening report</b>	No			
<b>Natura Impact Statement</b>	No			
<b>Relevant submissions</b>	Planning Authority screening			
<b>Step 2. Identification of relevant European sites using the Source-pathway-receptor model</b>				
European Site (code)	Qualifying interests Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connection	Consider further in screening Y/N
I identify the following European Sites on grounds the distance and source-pathway-receptor model. These European Sites were also considered and discounted in the Planning Authority Planner Report				
Tramore Back Strand SPA (004027)	<a href="https://www.npws.ie/protected-sites/spa/004027">https://www.npws.ie/protected-sites/spa/004027</a>	0.695km	No feasible connection.	No
Tramore Dunes and Backstrand SAC (000671)	<a href="https://www.npws.ie/protected-sites/sac/000671">https://www.npws.ie/protected-sites/sac/000671</a>	0.895km	No feasible connection.	No
<b>Step 3. Describe the likely effects of the project (if any, alone <u>or</u> in combination) on European Sites</b>				
<b>AA Screening matrix</b>				
Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*			
	Impacts	Effects		
Tramore Back Strand SPA (004027) Brent Goose <i>Branta bernicla hrota</i> Golden Plover <i>Pluvialis apricaria</i> Grey Plover <i>Pluvialis squatarola</i> Lapwing <i>Vanellus vanellus</i> Dunlin <i>Calidris alpina alpina</i> Black-tailed Godwit <i>Limosa limosa</i> Bar-tailed Godwit <i>Limosa lapponica</i> Curlew <i>Numenius arquata</i> Wetlands The Conservation Objectives for the SPA are to maintain the favourable conservation conditions of the identified Qualifying Interests. I consider the project would not compromise the objective of maintaining or make maintaining significantly more difficult.	No direct, indirect, ex situ or in combination impacts.	No significant effects likely.		
<b>No</b>	<b>Likelihood of significant effects from proposed development (alone): No</b>			

No	If No, is there likelihood of significant effects occurring in combination with other plans or projects? No	
No	Possibility of significant effects (alone) in view of the conservation objectives of the site No	
	Impacts	Effects
Tramore Dunes and Backstrand SAC (000671) Mudflats and sandflats not covered by seawater at low tide Annual vegetation of drift lines Perennial vegetation of stony banks <i>Salicornia</i> and other annuals colonising mud and sand Atlantic salt meadows - <i>Glauco-Puccinellietalia maritimae</i> Mediterranean salt meadows - <i>Juncetalia maritimi</i> Embryonic shifting dunes Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) Fixed coastal dunes with herbaceous vegetation (grey dunes) The Conservation Objectives for the SPA are to maintain the favourable conservation conditions of the identified Qualifying Interests. I consider the project would not compromise the objective of maintaining or make maintaining significantly more difficult.	No direct, indirect, ex situ or in combination impacts.	No significant effects likely.
No	Likelihood of significant effects from proposed development (alone): No	
No	If No, is there likelihood of significant effects occurring in combination with other plans or projects? No	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		
I conclude that the proposed development (alone) would not result in likely significant effects on European site(s) including the Tramore Back Strand SPA and Tramore Dunes and Backstrand SAC. The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project. No mitigation measures are required to come to these conclusions.		