



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321450-24

#### Development

Retain demolition of derelict structures and full planning permission to (a) Demolish residual structures on site (b) Construct an apartment building comprising of 19 apartments including associated site works.

#### Location

New Canal Road, Tralee, Co. Kerry

#### Planning Authority

Kerry County Council

#### Planning Authority Reg. Ref.

211248

#### Applicant(s)

Tulfarriss CG Ltd.

#### Type of Application

Permission

#### Planning Authority Decision

Grant

#### Type of Appeal

Third Party

#### Appellant(s)

Laura and Graham Foster and Andrius Krusa.

#### Observer(s)

Mary Foster

Denis Mc Carty & Others.

**Date of Site Inspection**

20<sup>th</sup> of March 2025

**Inspector**

Karen Hamilton

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## **1.0 Introduction**

- 1.1.1. The courts have quashed the Board's decision on ABP 313744-22 and remitted the appeal back to the Board for a new decision. All participants to the appeal have been invited to make any further submissions under s.131 of the Planning and Development Act, 2000, as amended. The following assessment represents a *de novo* assessment of the appeal.

## **2.0 Site Location and Description**

- 2.1. The appeal site is a derelict site (0.0553 ha) located along the eastern side of Canal New Road, Tralee, Co. Kerry. The site is currently surrounded, along the main road, by hoarding preventing access into the site.
- 2.2. There is a mix of commercial and residential in the vicinity of the site. There is a single storey commercial building immediately north, carpark to the rear, east and a commercial campus to the south, associated with the Kerry Group. There are residential properties on the opposite side of the Canale New Road, semi-detached with on-site parking and private gardens.
- 2.3. The characteristics of the area are typical of an edge of centre location for a town of the scale of Tralee. There is a range of residential types, intertwined with commercial developments and open space, with no one land use dominating the area.

## **3.0 Proposed Development**

- 3.1. The proposed development comprises of the following:
- Retention of the demolition of derelict structures on site.
  - Permission to a) demolish residual structures on site and b) construct an apartment building comprising of 19 apartments.
  - All other associated works.

## 4.0 Planning Authority (PA) Decision

### 4.1. Decision

Decision to Grant permission subject to 13 conditions of which the following are of note:

- C1: Development to be retained in accordance with the plans and particulars submitted on the 03/11/2021, 09/02/2022, 03/03/2022 and 13/04/2022.
- C2: Development to be carried out in accordance with the plans and particulars submitted on the 03/11/2021, 09/02/2022, 03/03/2022 and 13/04/2022.
- C6: Establishment of a management company under Section 47 of the Planning and Development Act, 2000.
- C13: Implementation of an environmental mitigation measures, appointment of an appropriately qualified environmental manager, the preparation and submission of a Noise and Vibration Management Plan, the retention of a competent person to carry out a final evaluation and qualification of construction-related waste likely to arise and a plan to dispose of same (for the written agreement of the PA).

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

The planning authority report reflects the decision to grant permission following the submission of **Further Information (FI)** on the following:

- The applicant was requested to address the demolition of the Jones Woodcraft Building. This was demolished after the application was submitted; therefore, the current application was to be amended for retention permission to retain the demolition of the Jones Woodcraft Building.
- Applicant was requested to submit the full details of the demolished materials.
- Applicant was requested to submit details of any additional materials required to be removed off-site.

- The applicant was required to provide a layout of the watermain and where it was connected to the public main.
- Applicant was requested to submit details for the management and disposal of the surface water from the site.
- Applicant was requested to submit a layout of the foul sewer and connection to the public network.
- Applicant was requested to submit design and details for the management and disposal of surface water.
- Applicant requested to submit a lifecycle report as per the national apartment guidelines.
- Applicant to confirm information contained in unsolicited information with regard the boundary treatment with the Kerry Group.
- Applicant to address issues raised by the Tralee Municipal District Roads relating to car parking, use of the Brandon carpark, set down spaces for delivery trucks and disabled parking.
- Applicant to confirm provision of cycle stands.
- Applicant to submit a revised proposal for the footpath.
- Applicant required to revise the communal open space to comply with the standards in the apartment guidelines.
- Applicant to submit revised design for the southern and eastern elevation to ensure they were not injurious to the potential development of lands owned by the Kerry Group.
- Applicant invited to respond to concerns raised in the submission by Windmill Glazing regarding the impact on the southern boundary and the loss of light.

**Clarification of Further Information (CFI) on the following:**

- Applicant to submit details on the demolition materials which had previously been moved off site
- Applicant to provide details of the waste collection permits for the transport of the demolition material moved off-site

- Applicant to provide details of the asbestos assessment report prepared before demolition works.

The PA had no objection to the proposal following the submission of information and the response from response from the internal departments.

#### 4.2.2. Other Technical Reports

- Environmental Department: No objection subject to conditions following the submission of FI and CFI.
- Biodiversity Officer: No objection following the submission of FI and CFI.
- County Archaeologist: No objection to proposal.
- Tralee Municipal District Roads:
- Water Services: No objection following the submission of FI
- Housing Estates Unit (HEU): No objection subject to conditions.
- Kerry National Road Design Office (KNRDO): No objection to proposal.

#### 4.3. Prescribed Bodies

Irish Water: No objection to proposal.

#### 4.4. Third Party Observations

Submissions were received from the appellant and observers. These issues are noted and are similar to the issues summarised below.

A submission was received from the Kerry Group, located to the south of the site, relating to the potential impact of the proposal on the development potential of the site.

### 5.0 Planning History

None of relevance on the site

#### Adjacent to the Site

**ABP 312838-22** (Reg Ref 21/938)



Board decision quashed by High Court Order for the permission granted to demolish derelict single storey structure and construction of a 4-storey residential development consisting of 20 one-bedroom apartments, and 10 two-bedroom apartments. The site is located within a designated Opportunity Site with the appeal site

## **6.0 Policy Context**

### **6.1. National Planning Policy**

#### **6.1.1. Project Ireland 2040 - National Planning Framework**

6.1.2. The NPF comprises the Government's proposed long-term strategic planning framework to guide national, regional and local planning and investment decisions over the next 25 years. Part of the vision of the NPF is managing growth and targeting at least 40% of all new housing in existing built-up areas of cities, towns and villages through infill and brownfield sites while the rest of new homes will be targeted on greenfield edge of settlement areas and within rural areas. The NPF also sets out a number of National Strategic Outcomes which include Compact Growth and Strengthened Rural Economies and Communities. These include:

- NSO 1 - Compact Growth
- NSO 7 - Enhanced Amenity and Heritage
- NPO 3a - Securing Compact & Sustainable Growth
- NPO 3c - Securing Compact & Sustainable Growth
- NPO 4 - Why Urban Places Matter (Community)
- NPO 5 - Why Urban Places Matter (Economy/Prosperity)
- NPO 6 - Why Urban Places Matter (The Environment)
- NPO 9 - Planning for Ireland's Urban Growth (Ireland's Towns)
- NPO 11 - Achieving Urban Infill/Brownfield Development
- NPO 13 - Performance-Based Design Standards
- NPO 32 - Housing
- NPO 33 - Housing (Location of Homes)

- NPO 34 - Housing (Building Resilience in Housing - Lifetime Needs)
- NPO 35 - Housing (Building Resilience in Housing - Density)

6.1.3. **Climate Action Plan 2025** builds upon last year's Plan by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and it should be read in conjunction with Climate Action Plan 2024.

6.1.4. **Climate Action Plan 2024:** The Climate Action Plan 2024 sets out the measures and actions that will support the delivery of Ireland's climate action ambition. Climate Action Plan 2024 sets out the roadmap to deliver on Ireland's climate ambition. It aligns with the legally binding economy-wide carbon budgets and sectoral ceilings that were agreed by Government in July 2022. Ireland is committed to achieving climate neutrality no later than 2050, with a 51% reduction in GHG emissions by 2030. These legally binding objectives are set out in the Climate Action and Low Carbon Development (Amendment) Act 2021.

6.1.5. **National Biodiversity Action Plan (NBPA) 2023-2030**

6.1.6. The 4th NBAP strives for a "whole of government, whole of society" approach to the governance and conservation of biodiversity. The aim is to ensure that every citizen, community, business, local authority, semi-state and state agency has an awareness of biodiversity and its importance, and of the implications of its loss, while also understanding how they can act to address the biodiversity emergency as part of a renewed national effort to "act for nature". This National Biodiversity Action Plan 2023-2030 builds upon the achievements of the previous Plan. It will continue to implement actions within the framework of five strategic objectives, while addressing new and emerging issue.

## 6.2. **National Policy and Guidance**

6.2.1. The following national policy and Section 28 guidance are also relevant:

- Housing for All: A New Housing Plan for Ireland (2021)
- Rebuilding Ireland: Action Plan for Housing & Homelessness (2016)
- Appropriate Assessment Guidelines (2009)
- Flood Risk Management Guidelines (2009)

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)
- Design Standards for Apartments, Guidelines for Planning Authorities (2023)
- Part V of the Planning and Development Act 2000 Guidelines (2017)
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (2018)
- Design Manual for Urban Roads and Streets (2013)

### 6.3. **Kerry County Development Plan 2022-2028**

The Kerry County Development Plan 2022-2028 was the development plan in place at the time the Board made a decision on the quashed file. As stated above, all parties involved in the application and appeal were invited to make further submissions.

#### Zoning

Volume 2 of the development plan includes the Town Development Plans

The site is located on lands zoned M4: Built up area on Map E of the Tralee Town Plan where it is an objective for existing built areas of mixed use.

The zoning description in Volume 6 of the development plan refers to lands within this zoning as a mix of land uses which may have existing buildings in place, brownfield lands and undeveloped greenfield lands within the development boundary.

#### Opportunity Site

The site is identified as one of 4 small opportunity sites on Map 1.7 of Volume 2.

There are also 5 larger opportunity sites identified throughout the town of Tralee.

Policy TR 41: Facilitate and/or require the preparation of master plan for the Opportunity sites and the Lohercannon Area where appropriate prior to the redevelopment of opportunity sites identified in the plan to ensure their development in a cohesive and integrated manner.

#### Settlement Strategy

Chapter 3 of the development plan identifies Tralee as one of two Key Towns for Kerry.

54% of the Core Strategy allocation are directed towards Key Towns.

#### Development Management Standards

Volume 6 consists of development Management Standards & Guidelines

### **6.4. Natural Heritage Designations**

- Tralee Bay Complex SPA (Site Code 004188) is situated 624m to the south-west of the appeal site.
- Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site Code 002070) is located 772m to the south-west of the appeal site.

### **7.0 Environmental Impact Assessment (EIA) Screening**

7.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2, in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

### **8.0 The Appeal**

#### **8.1. Grounds of Appeal**

The grounds of appeal are submitted by the owners of commercial business to the north and in the vicinity of the site. The main issues raised are summarised below:

##### **8.1.1. The Planning Authority Assessment and Decision**

- The PA further information request advised the applicant that the building had been demolished without planning permission and retention of works should be included in the proposal.

- The applicant submitted revised drawings indicating open space to the rear of the building.
- The third-party submissions, although noted as considered in the planner's report, do not appear to be addressed in any detail.

#### 8.1.2. Lack of carparking will unduly impact on the residents in the immediate area.

- The report of Tralee MD Roads notes the location of the site and does not consider the site can be realistically included as a site under paragraph 4.19 of the Sustainable Urban Housing Design Standards for New Apartments whereby the default policy is for carparking to be minimised. The site is not considered to be well served by public transport.
- The guidance in the Sustainable Urban Housing Design Standards for New Apartments is paragraph 4.22 as a relatively peripheral or less urban location. There should be one space per unit with one space for a visitor for every 3-4 apartments.
- The Tralee Town Development Plan, Table 15 states there should be 1.25 car parking spaces for dwellings/ apartments in Parking Zone Area B.
- Reduced parking is on a case-by-case basis.
- Despite concerns raised by the roads section the planner's report stated that the principle of development without parking was acceptable having regard to the provisions of Section 6.27 of the apartment guidelines.
- There is currently a parking problem in the vicinity of the site with insufficient parking spaces for properties and business in the vicinity of the site.
- The use of public car parks within the vicinity of the site is unrealistic as they are for short term visitors not long-term parking.
- The new pedestrian entrance will have a negative impact on the

#### 8.1.3. Site Planning History and Policy

- There is no planning history on the site.
- The site is identified as a brownfield/ small opportunity site.

- There are several policies in the development plan relating to opportunity sites/ regeneration.
- Section 12.27 and Section 12.28 of the development plan sets out the relevant section relating to car parking.
- Section 12.10 and Section 12.17.1 of the development plan sets out the relevant section relating to car parking.
- The planning relied on national guidance rather than critically examining the proposal in line with local policy.

8.1.4. Impact of the design and layout on the surrounding area.

- The PA report relies heavily on the Sustainable Urban Housing Design Standards for New Apartments (2020) and Sustainable Residential Development in Urban Areas (2008).
- The scale, nature and impact on the received environment and the adjoining properties should be assessed.

8.1.5. The impact of the proposed development and a separate proposal on the northern side of appellants property.

- The development of the two sites will lead to a piecemeal approach.
- The redevelopment of these sites should be undertaken after an agreed masterplan.
- Both these sites are beside the appellants property and have been granted two separate planning permissions.
- The design is based on the former Bradnon Court Hotels on James Street.
- There is no reference to the appellants property.
- The future development of the appellants site is severely compromised by both applications.
- In the absence of a masterplan the proposal would be ad hoc.
- The buildings have been demolished on the site without planning permission.

8.1.6. Lack of carparking on the site.

- The lack of parking will unduly negatively impact the business and residents of the area.
- The area is heavily trafficked, as referenced in the Kerry Group PC submission.
- There is a complete lack of carparking on the site.
- The site does not have sufficient alternative modes of public transport to support no parking on the site.
- The lack of parking will exacerbate a parking problem in the vicinity.
- No traffic assessments have been submitted with the application.

#### 8.1.7. The standard of open space and residential amenities

- Little amenity value with the communal open space proposed.
- The communal amenity space is overlooked by private amenity areas.
- The applicant's shadow projection drawings do not assess the impact of overshadowing on the communal open space although it is clear the design cannot meet the BRE standards.
- The BRE standards indicate that communal amenity space should have at least 2 hrs of sunshine on the 21<sup>st</sup> of March and the area which can receive 2 hrs is less than 0.8 times its former value.
- The design represents overdevelopment on the site.
- The provision for cycle parking on the site is substandard and inadequate.

#### 8.1.8. Appendix 1: Receipt of appeal checklist, previous correspondence and submissions to the PA. Other third-party submissions included with this submission.

### 8.2. **Applicant Response**

The applicant responded to the grounds of appeal, as summarised below:

#### 8.2.1. Design and layout

- The site is not suitable for low density car led development.

- Any further development must follow national policy on redevelopment of central urban centres site and should be assessed on individual merits.
- Tralee is a town of significant employment, third level education and is an appropriate location for medium to high density development.
- The site can be classified as a central or intermediate location and is within walking distance of the town centre.
- Tralee is the 8<sup>th</sup> largest town in Ireland.

#### 8.2.2. Impact on the development potential of the adjoining site

- The site forms part of an opportunity site and part of a corner site.
- It is unreasonable to suggest that the site and adjoining sites cannot be development in a co-ordinated and independent manner.

#### 8.2.3. Impact on Traffic and Transport

- The site is centrally located close to facilities, parks etc
- There are sustainable forms of transport in the area including the hire of cars.
- If there are fewer cars in the area it would be a safer environment.

#### 8.2.4. Communal Open Space

- There is sufficient well designed communal space to meet the standards in the apartment guidelines.
- The area is well served by public open space including the Tralee town park, Tralee wetlands centre, Lee Valley River walk and Blennerville Canal walk.

### 8.3. **Planning Authority Response**

#### 8.3.1. The response from the planning authority is summarised below:

- The Shadow Impact Assessment submitted by the applicant is noted and considered satisfactory.
- A higher density on an urban infill site is considered desirable and in the interest of sustainable development.



- The principle of development at the location without carparking is considered acceptable and in keeping with the provisions of the national apartment guidelines.

#### **8.4. Observations**

Two observations were received from Mary Foster (owner of a premises adjoining the property) and Denis Mc Carthy and Others (residents in the vicinity, to the west, of the site). Some of the issues raised are similar and have been summarised under common themes below:

##### **8.4.1. Procedure**

- The application was for the demolition of the building and there is no clear documentation as to why the walls were removed.

##### **8.4.2. Design and layout**

- Out of character with the surrounding area.
- The site cannot be defined as a 'central urban area'.
- The location of the bin storage would conflict with on-street parking.

##### **8.4.3. Impact on the residential amenity**

- Overbearing impact on the residential amenity.
- The communal open space is not well designed or of an appropriate size.
- Impact the pedestrian movement around the site.
- Overshadowing on properties on the opposite side of the street.
- Overlooking of properties on the opposite side of the street.

##### **8.4.4. Traffic and Transport**

- Negative impact from construction traffic
- Lack of parking in the scheme and impact on the surrounding area as it is already at capacity.
- The lack of parking would set an undesirable precedent for other developments.

## **8.5. Further Responses**

8.5.1. The applicant submitted a response in relation to the grounds of appeal, as summarised below:

### **8.5.2. Design and Layout**

- The development is appropriate at this location, in an urban area along a main transport route
- The design, heights and densities are appropriate for an urban setting.

### **8.5.3. Impact on Residential amenity**

- The housing to the west on the opposite side of the road are c. 20.8m from the site.
- The setback from the existing height means the site can accommodate a three-storey building with a 4<sup>th</sup> set back.
- The construction of a two-storey building would be unsustainable in the inner zone of Tralee.
- The information submitted in the shadow projection drawings do not reflect the urban context of the site and some impact from light. The dwellings on the opposite side of the road may have some overshadowing on the front gardens although they also have rear gardens and sufficient private amenity space unaffected or overshadowed by the proposal.

### **8.5.4. Carparking**

- The proposed development seeks to create a car free centrally located urban scheme. The proximity to the town centre is highlighted. The proposal will be an attractive option for urban dwellers.
- The site is well served by public transport and taxis.
- The third parties overstate the reliance of the scheme on private transport.

## **9.0 Responses received following remittal of file to the Board**

### **9.1. Introduction**

- 9.1.1. Following the remittal of the appeal case to the Board, on the 10<sup>th</sup> of January 2025 all participants in the appeal were notified of the High Court decision to remit the file back to the Board and invited to make further submissions/ observations.
- 9.1.2. One submission was received from the applicant as summarised below.

### **9.2. Applicant Response**

#### **9.2.1. Background**

- The Board did not oppose the applicant's claim for certiorari quashing the Board order and the decision was based on Core Ground 1 of the Applicants Statement of Grounds namely because the planning application originally sought permission for prospective demolition, permission for retention of the relevant demolition works carried out to have been the subject of a fresh application.
- The judge remitted the proposal back to the Board for further consideration.

#### **9.2.2. Planning Application Details**

- Details submitted in relation to the application submitted.
- No other planning history noted.

#### **9.2.3. Planning Objectives**

- Zoning Objective M4 Zoning
- Planning Objective on the site 'Opportunity Site'. Site identified as a small opportunity sit for development.
- Policy Objective KCDP: Facilitate re-development a reuse of structures
- Policy Objective KCDP 1.5.2 Other opportunity sites
- National & Local Development Plans include policies to development town centre first, with appropriate densities.

- Appropriate density: The site is a central accessible urban location and within a 5 min walk to the town centre. The fact that the proposal will affect the daylight to the roof of an adjoining roof structure is not sufficient reasons to leave an infill site undeveloped.
- Design and approach: The application is for residential development in an urban location.
- The ABP inspectors report indicated that the site was generally suitable for large scale and higher density development.

#### 9.2.4. Master planning

- The Board already indicated that a masterplan was not essential for such a small site.
- Development allows for orderly phased development.
- There are established precedent in the area for this type of development with other infill sites in Tralee.

#### 9.2.5. KCC grant of planning Ref.21/1248

- Following an RFI and CFI request KCC considered all the information on file and granted permission.
- All the relevant information is on file and was carefully considered.
- The submissions are included on the public file
- The AA and EIA screening indicates that the project is not of a scale or type which is likely to cause any significant negative environmental impacts or adverse effects on any European Sites.
- The Planners report sets out all the planning policy for the site and indicates compliance with the development plan.

#### 9.2.6. ABP grant of permission Ref. 313744

- The third-party submissions etc are set out in the inspector's report and they concurred with the decision of the planning authority.

- The inspector undertook an assessment on density etc, impact on residential amenity, Traffic and parking, Appropriate Assessment. The outcome under each assessment was positive.
- The Board considered the inspectors report and refused for two reasons, namely the zoning and reason for a masterplan and secondly the AA screening.
- The inspector did not undertake an EIA screening although this was noted in the reasons and considerations. It is stated that the proposals can be screened out for EIA.

#### 9.2.7. Further Comment

- The appellant took Circuit Court proceedings against the applicant in Kilkenny. In these proceedings the appellant stated they were delighted the derelict building was removed as there was fear it would cause serious damage to buildings.

#### 9.2.8. Site Suitability and planning gain.

- The KCDP makes a compelling case that this site should be redeveloped for up to four stories as an important site for the regeneration of Tralee. Therefore, the site should be developed in the national interest and in light of the housing crisis.
- There are many planning gains for the development of a site in a central urban location in compliance with the principles of Town Centre first.
- The use of a brownfield site encourages good sustainability planning practices with no risk to EU designated sites or impact on the environment.

## 10.0 Assessment

10.1. Having considered the contents of the planning application and appeal, the submissions on file, having regard to relevant local planning policy, and having undertaken an inspection of the subject site and surrounding area, I consider that the key issues arising for assessment in this case include:

- Planning History

- Principle of the Proposed Development
- Other

10.2. Each of these issues is considered in turn below.

### 10.3. **Planning History**

- 10.3.1. The site is in the town of Tralee, County Kerry. It adjoins a commercial building and forms part of a site identified as an opportunity site in the Kerry County Development Plan 2022-2028. This opportunity site includes the adjoining commercial site and additional site north of that commercial site, at the corner of Canal New Road and James Street.
- 10.3.2. Permission was granted on one of the sites, which forms part of the opportunity site, (corner of Canal New Road and James Street) by Kerry County Council (Reg Ref 21/938) for the demolition of a derelict single storey structure and construction of a 4-storey residential development with all associated works. This decision was appealed (ABP 312838-22) and the Board granted permission. The Board decision was subject to Judicial Review and was quashed having regard to land ownership issues. The file was not remitted back to the Board for a decision.
- 10.3.3. Similarly, Kerry County Council granted permission on this subject site (Reg Ref 211248) for the retention of demolition of a derelict structure and construction of 19 apartments. This decision was appealed to the Board (ABP 313744-22) and the Board granted permission. The Board decision was subject to Judicial Review and quashed because the Board conceded on Core Ground 1. This file was remitted back to the Board for a new assessment.
- 10.3.4. Following remittal of the file, the Board circulated the Court Order for further response from all parties (s.131 notice). In the applicant's response to the s.131 notice, they note that An Bord Pleanála conceded the applicant's Statement of Grounds namely, in the circumstances of this case, that the planning applications original sought for the prospective demolition, permission for retention of the relevant demolition works ought to have been the subject of a fresh application. The applicant does not make any further commentary on this issue and no submissions were received from third parties on the s.131 notices.

10.3.5. I have dealt with this matter in detail below.

#### **10.4. Principle of Development**

- 10.4.1. The initial proposal, and development description, submitted to the PA applied to demolish residual structures and construct an apartment building comprising of a total of 19 apartments. On receipt of the application, the area planner's site inspection and submissions from third parties, it was noted that the structures on site, including a boundary wall, had already been demolished. Further information was requested requiring clarification on the demolition of a building, previously on the site. In response to the PA query the applicant submitted confirmation that the derelict structure on site had been demolished due to concerns over its structural safety. The applicant advertised the submission of this information, in addition to other further information, as significant and amended the development description to include the following "Retain demolitions of existing derelict structures". The PA accepted the applicant had addressed their concerns, in addition to other concerns, and granted permission for the proposed development.
- 10.4.2. The grounds of appeal have raised concern with regard to the process and the applicant's development description to retain the demolition of building works. I note that while the applicant elaborated on these issues in their response to the circulation of materials, they did not make further commentary on this issue. The applicant did not submit any further response to the Board.
- 10.4.3. Although the Board accepted a valid appeal to the PA decision, I have concerns regarding the development description of the proposed development. In this regard, it is noted that the amended site notices and development description applied for a retrospective retention of demolition. Procedurally, it is my opinion that such a proposal would require a full suite of plans and particulars, appropriate fee for retention etc, submitted with the initial documentation or with the significant further information as was the case in this application. This does not appear to be the case, as the PA has accepted the retention works merely by the applicants change in the development description and readvertisement of same and appear to have relied on the submission of plans and particulars with the initial application. This is further

evident by the request by the Environment Section at the FI stage to seek clarification on the processing of waste materials from the demolition.

- 10.4.4. Having regard to the above, I consider the Board should refuse the proposed development for reasons of inappropriate procedure and misleading development description.

## 10.5. Other

- 10.5.1. A range of issues have been raised in the grounds of appeal and can be cross referenced in the observer's submissions. Having regard to the substantial reason for refusal I do not intend to go into these in significant detail although should the Board be of a mind to grant permission, they should be aware of these issues.
- 10.5.2. **Design and Layout:** The third-party submission has raised concern with regard to the appropriateness of the building of this scale at this location. I note the proposed development includes a 3-storey building with an additional floor setback. The proposed building fronts onto a main road, adjoining the public footpath. It is in line with the building frontage adjoining the site to the north. I note the road along the front of the site, the Canal New Road, is a main regional route into the town centre, with a range of building styles and heights. I also note an apartment building on the corner of James Street and Basin Road to the north of the site which has a similar height to the proposed development which I consider an appropriate scale at this location. In this regard I consider the scale and massing of the proposed development acceptable. I note the ground floor design, facing onto the public road includes bin storage and conservatory of two ground floor units and I have concerns relating to the absence of an attractive active street frontage onto a main urban thorough fare. The Board will note this has not been raised during as an issue and would be considered a new issue. Having regard to the substantive reason for refusal I do not consider it appropriate to request additional information on the ground floor design.
- 10.5.3. **Development Potential of adjoining site:** Third party submissions reiterated a submission to the PA relating to the impact on and adjoining commercial site, owned by Kerry Group PLC. In their submission to the PA, concern was raised in relation to the impact of development potential on the adjoining site. I note the development



plan includes the site as one of 5 small opportunity sites with development potential. Policy TR 41 requires a masterplan for these areas where appropriate. The applicant states that due to the size of the site a masterplan is not required. I note the location of the site, adjoining a large commercial site, and the size, which is relatively small in comparison to the wider urban setting, and I do not consider it should be a necessity for the applicant to produce a masterplan for the development of the site. In addition to this, having regard to the open nature of the adjoining site, I do not consider the proposal would preclude the future development on the adjoining site to the south or the existing commercial site to the north.

10.5.4. **Lack of carparking on site:** The proposed development does not include any carparking on the site. The applicant argues it should be determined as a Central and/or Accessible Urban Locations as per Section 4.21 of the *Sustainable Urban Housing: Design Standards for New Apartments (2023)* where the provision of car parking is minimised at centrally located urban sites which are well serviced by public transport. This national guidance goes on to state that these types of sites are generally located within cities. The Transport Section of Kerry County Council raised concern in relation to the absence of carparking on the scheme and other third parties are also concerned that the absence of parking on the site will lead to overspill parking on already busy side streets. I note the location of the site on the edge of Tralee town centre and the criteria for Central and/or Accessible Urban Locations which refers to sites adjacent to city centres or centrally located employment areas, and 'Includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10-minute peak hour frequency) bus services.' Although there may be a provision of public transport around Tralee the applicant's argument that residents can walk, cycle or use public transport has not been supported by any evidence base. To this end, the proposal does not include sufficient clarity that prospective residents would not be car reliant, I would have concerns that the site is not appropriate for a car free development and may have the potential cause a negative impact on the traffic in the vicinity of the site.

10.5.5. **Impact on Residential Amenity:** The impact from overshadowing is raised by the residents of properties to the west of the site, on the opposite side of the New Canal Road. A Shadow Impact Assessment accompanied the application which indicates

some overshadowing of the dwellings and front gardens along Canal New Road in the morning between c. 10.00-11.00 am. I note these dwellings are located at a substantial distance from the edge of the building (c. 20m) to the west and having regard to the design and orientation of the site I do not consider there would be a significant adverse impact on their residential amenity because of overshadowing. The shadow projection drawings do not include any analysis of overshadowing of the private and communal open space for the proposed apartments. I note the location of two private balconies along the ground floor 1 m from a block wall and due to the orientation onto a narrow alley way there will be limited sunlight, a serious concern for the residential amenity. In addition, due to the orientation of the shared communal space, to the east of the site, I would have concerns in relation to the amount of sunlight daylight available to this area. Again, having regard to the substantive reason for refusal above, I do not consider it necessary to refuse permission for this reason, or request further information from the applicant.

## **11.0 Appropriate Assessment (AA) Screening**

11.1. Having regard to the modest nature and scale of the proposed development, its location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site (See Appendix 3).

## **12.0 Water Framework Directive (WFD) Screening**

12.1. Having regard to the modest nature and scale of the proposed development, it is concluded on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) 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.

## 13.0 Recommendation

Recommend REFUSAL for the reasons and considerations below:

## 14.0 Reasons and Considerations

The proposed development includes the regularisation of works undertaken during the planning process, to include the retention of a demolition of part of a commercial building. On the basis of submissions received in connection with the planning application and appeal, it appears to the Board that the works undertaken may not have been adequately detailed during the application and appeal and it would be inappropriate for the Board to undertake an assessment of a retrospective retention request in this instance. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of permission for the proposed development in such circumstances.

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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Karen Hamilton  
Assistant Director of Planning

21<sup>st</sup> of August 2025

## 15.0 Appendix 1: Form 1 - EIA Pre-Screening

<b>Case Reference</b>	321450-24
<b>Proposed Development Summary</b>	Retain the demolition of derelict structures and a) demolish residual structures on site a b) construct an apartment building comprising of 19 apartments
<b>Development Address</b>	New Canal Road, Tralee, Co. Kerry
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<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>	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<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 checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	<p><b>State the Class and state the relevant threshold</b></p>
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p>Class 10(b)(i) 'Construction of more than 500 dwellings units</p> <p>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 case of other parts of a built-up area and 20 hectares elsewhere</p>

<p><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></p>	
<p>Yes <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p>No <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## 16.0 Appendix 2: Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	ABP-321450-24
<b>Proposed Development Summary</b>	Retain the demolition of derelict structures and a) demolish residual structures on site a b) construct an apartment building comprising of 19 apartments
<b>Development Address</b>	New Canal Road, Tralee, Co. Kerry
<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>	<p>The proposal for 19 residential units is located within the development boundary of Tralee on lands zoned Objective 'M4' – Built Up Area in the current Tralee Town Development Plan (as extended) which is which is incorporated into the Kerry County Development Plan (CDP) 2022-2028.</p> <p>The standalone development has a modest footprint and does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance.</p> <p>The development, by virtue of its type and scale, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
<b>Location of development</b>	The development is situated in a densely populated urban area on brownfield land and is located at a remove from sensitive natural habitats, designated sites and landscapes of significance identified in the Kerry CDP.
<b>Types and characteristics of potential impacts</b>	Having regard to the modest nature of the proposed development, its location relative to 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	EIA is not required.

significant effects on the environment.	
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**Inspector:**

**Date:**

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

**Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

## 17.0 Appendix 3: AA Screening

Screening for Appropriate Assessment Test for likely significant effects	
<b>Step 1: Description of the project and local site characteristics:</b> Retain demolition of derelict structures and full planning permission to (a) Demolish residual structures on site (b) Construct an apartment building comprising of 19 apartments including associated site works at New Canal Road, Tralee, Co. Kerry.	
<b>Brief description of project</b>	It is proposed to retain the demolition of the building and construct 19 apartments in Tralee.
<b>Brief description of development of site characteristics and potential impact mechanisms</b>	<p>A detailed description of the site, surrounding area and proposed development is provided in Sections 1.0 and 2.0 of the Inspector's Report and detailed specifications of the proposal are provided in the AA Screening Report and other planning documents submitted by the applicant.</p> <p>Potential impacts arise during construction, noise and light spill during operation, surface water run-off.</p> <p>The Tralee Bay and Magharees Peninsula West to Cloghane SAC is located c. 770m south-west and the Tralee Bay Complex SPA is located in same area, c. 660m to the south of the site.</p>
<b>Screening report</b>	<b>Yes</b>
<b>Natura Impact Statement</b>	<b>No.</b>
<b>Relevant submissions</b>	<b>None.</b>
<b>Step 2. Identification of relevant European sites using the Source-pathway-receptor model</b>	
<p>Six European Sites have been identified as being located within 10km of the site, the AA screening Report does not include a detailed assessment of these. The Biodiversity Officer undertook a screening assessment of those European Sites within 15km</p> <p>I note these six sites and I consider two European sites were identified as being located within a potential zone of influence of the proposed development as detailed in Table 1 below. I note the applicant did not consider any additional sites within a wider sphere of influence and I agree that no further range of European Sites is necessary for consideration in relation to this proposed development.</p> <p><b>Table 1:</b></p>	



European Site (code)	Qualifying interests <sup>1</sup> Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections <sup>2</sup>	Consider further in screening <sup>3</sup> Y/N
<p>Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site No. 002070)</p> <p><a href="#">Tralee Bay and Magharees Peninsula, West to Cloghane SAC   National Parks &amp; Wildlife Service</a></p>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Dunes with Salix repens ssp. argentea (Salicion arenaria) [2170]</p> <p>Humid dune slacks [2190]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils</p>	<p>772km to the south-west of the site</p>	<p>No, even though the site is located close to the SAC there are no hydrological connections and both the surface and foul water will be treated in the public system.</p>	<p><b>N</b></p>

	<p>(Molinion caeruleae) [6410]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Petalophyllum ralfsii (Petalwort) [1395]</p>			
<p>Tralee Bay Complex SPA (Site No. 004188)</p> <p><a href="#">Tralee Bay Complex SPA   National Parks &amp; Wildlife Service</a></p>	<p>Whooper Swan (Cygnus cygnus) [A038]</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> <p>Teal (Anas crecca) [A052]</p> <p>Mallard (Anas platyrhynchos) [A053]</p> <p>Pintail (Anas acuta) [A054]</p> <p>Scaup (Aythya marila) [A062]</p> <p>Oystercatcher (Haematopus ostralegus) [A130]</p> <p>Ringed Plover (Charadrius hiaticula) [A137]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Grey Plover (Pluvialis squatarola) [A141]</p> <p>Lapwing (Vanellus vanellus) [A142]</p> <p>Sanderling (Calidris alba) [A144]</p> <p>Dunlin (Calidris alpina) [A149]</p> <p>Black-tailed Godwit (Limosa limosa) [A156]</p>	624km to the south-west of the development site.	As per above, there are no hydrological connections to the SPA and neither the construction nor operation involved would raise any significant effects on the	<b>N</b>

	<p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Turnstone (<i>Arenaria interpres</i>) [A169]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Wigeon (<i>Mareca penelope</i>) [A855]</p> <p>Wetland and Waterbirds [A999]</p>			
<p><sup>1</sup> Summary description / <b>cross reference to NPWS website</b> is acceptable at this stage in the report</p> <p><sup>2</sup> Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species</p> <p><sup>3</sup>if no connections: N</p>				
<p>The Biodiversity Office from Kerry County Council undertook an AA Screening assessment. This AA Screening Report notes the internal reports from the Environment and Water Section of KCC and concludes that following the submission of FI and the servicing of the site the proposed development would not significantly effect a European Site. In reaching their conclusion the Biodiversity Office notes a hydrological connection, to the Tralee Bay and Magharees Peninsula West to Cloghane SAC, although does not state what this connection is. I note the site is separated from the SAC by roads and buildings with no hydrology on the site. I conclude that there are no hydrological connections.</p> <p>Due to the location of the site, on brownfield lands and the scale of the works to construct 19 units, significant effects from other pathways have been ruled out i.e., habitat loss, impacts from surface/ foul water discharge, impacts from noise and disturbance.</p>				
<p><b>Step 3. Describe the likely effects of the project (if any, alone <u>or</u> in combination) on European Sites</b></p> <p>The proposed development will not result in any direct or indirect effects on either the SAC or SPA as it relates to the Tralee Bay SAC or SPA.</p> <p>Having regard to the distance separating the site to the nearby European Site there is no pathway for loss or disturbance of important habitats or important species associated with the feature of interests of any of the SPA/SAC's identified above.</p>				

## **Screening Determination**

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 Site and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- The scale of the development;
- The location of the subject site within the urban context of Tralee;
- The lack of any direct connections to the nearest European site; and
- Taking into account appropriate assessment screening report submitted with the application.