



An
Bord
Pleanála

Inspector's Report

ABP-306582-20

Development	36 no. houses and 4 no. duplex apartment units and all associated site works.
Location	Old Laghy Road & Farmleigh Park Road, Drumrat TD., Donegal Town.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1950913
Applicant(s)	Tir Conaill Properties Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Lee McGee
Observer(s)	None
Date of Site Inspection	15 th May 2020.
Inspector	Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is located to the east of Donegal town centre to the rear of an existing small residential development comprising 12 no. semi detached and detached dwellings. The site is accessed from the Old Laghy Road to the west via an existing gated entrance from the existing access road located to the south of the Farmleigh housing development.
- 1.2. The topography of the land is relatively flat but rises sharply along the southern and eastern boundaries. The site is open containing scrub and is bounded by a dense treeline and hedgerow and covers an area of c.2.442ha.
- 1.3. The general pattern of development comprises of low-density suburban style housing interspersed with local convenience type uses.

2.0 Proposed Development

- 2.1. It is proposed to construct 40 no. mixed type housing units which comprise the following:
 - 30 no. two storey 4-bedroom semi-detached houses.
 - 6 no. two storey, 5-bedroom detached houses.
 - 4 no. 2 bedroom duplex apartments in 2 no. two storey blocks.

3.0 Planning Authority Decision

3.1. Decision

Donegal County Council determined to grant permission for the proposed development subject to conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planners report is consistent with the decision of the planning authority. Revised plans as a result of the further information request resulted in a higher density of

development approving 31 dwellings and 26 apartments. Further information sought can be summarised as follows:

- Revision of density, applicant requested to provide for a higher density.
- Open space to include an all-weather element for year round use.
- Relocation of access road to south of the site.
- Provision of future access to north west to facilitate linkage to Ballybofey road.
- Greater detail in relation to footpaths, cycle paths etc.
- Design calculations in relation to gabion structures.
- Details of public lighting, speed tables, advance signage, design assumptions, for proposed access road.
- Detailed design for proposed attenuation.
- Details of a proposed crossing on the Old Laghey Road that is to be provided to facilitate the proposed development.
- Provision of an ecological report which considered the hydrological link between the development site and the associated risks with the discharge of surface and ground waters from the same to the Drumanny River, in order for the Council to determine whether a Stage 2 Appropriate Assessment is required.

Significant further information was received and was re-advertised accordingly. The revised plans provided for two apartment blocks at the entrance and the rear of the site.

3.2.2. Other Technical Reports

- Roads Department – Further information was requested in relation to infrastructure details and attenuation. The engineer had no objections to the further information response subject to conditions in relation to footpath design calculations, prevention of surface water entering roads and the provision of signing and lining drawings prior to the commencement of development.

3.3. **Prescribed Bodies**

Department Culture, Heritage and the Gaeltacht – predevelopment testing to be carried out.

3.4. **Third Party Observations**

Two third party submissions were received the issues raised are largely covered within the grounds of appeal, however it is of note that an issue in relation to the structural integrity of the bridge was raised within the submission made by Farmlegh Residents Association. An engineer's report accompanied this submission in which it stated that subsidence has occurred and resulted in cracking within the parapet walls of the bridge. It is recommended that a detailed design and calculations are submitted with the planning application in order to ensure that the bridge can cater for the proposed construction traffic and additional traffic movements arising from the proposed development.

Planning History

There is no recorded history for the appeal site.

Adjacent site at entrance to appeal site.

- 04/153 – Permission was granted for the development of 2 no. apartment blocks and 8 no. two storey houses and a bridge over existing river.

4.0 **Policy Context**

4.1. **Development Plan**

Donegal Development Plan 2018-2024

- Donegal Town is identified as a layer 2 strategic town.
- 2A.10 Core Strategy Objectives
- 2A.11 Core Strategy Policies

Seven Strategic Towns LAP 2018-2024

- The site is zoned Primarily Residential within the plan and is expected to have yield of 35 units.
- Section 9.7 – adequate wastewater and water infrastructure in the town to accommodate growth.
- Policy GEN-H-2: It is a policy of the Council to consider proposals for multiple residential development (i.e. 2 or more units) on lands zoned ‘Primarily Residential’ and on specified ‘Opportunity Sites’ on the accompanying land-use zoning maps (Map1- 7) and also to consider proposals for residential development on lands within the defined town centres and ‘Established Development’ areas, subject to compliance with the specific policies for each individual settlement and with all other relevant policies of this LAP, compliance with the Habitats Directive and all other material planning considerations including environmental considerations.
- Policy GEN-H-4: It is a policy of the Council that proposals for single dwellings will only be permitted on lands zoned ‘Primarily Residential’ where it can be clearly demonstrated that; (i) The location and layout of the dwelling would not compromise the ability of the site to facilitate the provision of comprehensive integrated residential development/s utilising the entire site area; and (ii) The location and layout of the dwelling would not compromise the line of any proposed relief road (where applicable); and (iii) The proposal would not be detrimental to the residential amenity of any neighbouring properties or be injurious to the general character of the surrounding area; and (iv) The proposal would otherwise comply with all relevant policies and objectives of this Local Area Plan.

National Planning Framework Project Ireland 2040

- Section 2.2 - Compact Growth
- NSO 1 – Compact growth

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, Department of Housing, Planning and Local Government March 2018

- SPPR 2 – Dwelling mix.
- SPPR 5 – Ground floor ceiling heights
- Section 4.11 - adequate levels of sunlight to reach communal amenity space throughout the year.
- Section 4.15 Bicycle Parking and Storage.
- Section 4.18 – Carparking.
- Section 6.5 – Apartments and daylight provision.

Quality Housing for Sustainable Communities 2007

Section 5 – Dwelling design

4.2. Natural Heritage Designations

The nearest Natura 2000 sites to the proposed development are as follows:

Lough Eske and Ardnamona Wood SAC – c. 100 metres west of the site.

Donegal Bay (Murvagh) SAC c. 1km west of the development

Donegal Bay SPA c. 1km west of the development.

4.3. EIA Screening

- 4.4. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

5.0 The Appeal

5.1. Grounds of Appeal

The grounds of appeal have been submitted by Lee McGee and are summarised as follows:

- Development encroaches onto appellants lands.

- Unacceptable increase in traffic movements and no traffic calming measures proposed.
- Boundary wall should be provided between the existing development and that proposed in order to prevent any liability in terms of insurance.
- There are existing flood issues and pipe work will be unable to cater for additional loadings.
- Additional loadings will exacerbate flood levels.
- Proposal could have an impact on the freshwater peal mussel.
- Three storeys out of character with existing pattern of development.

5.2. Observations

- None

5.3. Applicant Response

Paul Doherty Architects have prepared a response to the grounds of appeal on behalf of the applicant. The issues raised are summarised as follows:

- The lands are appropriately zoned.
- An error has occurred on the PRA maps which infringed upon the appeal site folio in relation to no. 16. A historical assessment of previous land folios has been carried out in order to demonstrate that an error has occurred.
- The increase in traffic movements associated with the proposed development equate to less than 10%
- Applicant has corresponded with Donegal County Council regarding foul sewer network and it has been confirmed that there are no difficulties with this infrastructure.
- Surface water will remain at greenfield run off levels.
- A number of photographs of flooding are taken from a different estate located 1km from the appeal site.
- Ponding is localised and could be attributed to blocked gullies.

- Fresh Water Pearl Mussel associated with Lough Eske is 5km upstream of the development.
- An Environmental consultant screened the proposed development as part of the planning application and only recommended measures to prevent silt from entering the river during construction.
- Proposed development will not result in overlooking or overshadowing, adequate separation distances have been provided.
- A structural engineering report was submitted in response to the further information request and stated that the bridge was structurally sound and capable of accommodating additional traffic arising from the development.

5.4. **Planning Authority Response**

5.5. Donegal County Council have responded to the grounds of appeal as follows:

- Sufficient legal interest in the lands has been demonstrated.
- Footpaths appeal to be outside of the control of the appellant.
- Lands are zoned for residential development and the roads department do not have any issues in relation to the carrying capacity of the road to cater for the development.
- Boundary treatments are considered to be acceptable and there is an existing hedge which will be maintained between the developments.
- Donegal flood events were not influenced by surface water from the development. Flooding in Farmleigh Park was due to infrastructure deficits.
- Extensive attenuation is provided for within the scheme and the Council is satisfied that run off levels are acceptable.
- A hydrological report was submitted and demonstrated that there would be no impact on the Drummenny River.
- There is no evidence that the Fresh Water Pearl Mussel is present downstream of the junction of the Drummenny River and the Eske.
- The mix of residential development is appropriate.

- Development was altered by way of further information to provide for a more compact form of development which provided a greater mix of housing tenure.
- The development provides contemporary accommodation in an accessible location and is in accordance with the overarching aims of the NPF.

6.0 Assessment

- 6.1. This is a third-party appeal in relation to Donegal County Council's decision to grant permission for the development of a mixed tenure residential scheme. The site is located on lands zoned PR8, which is a Primarily Residential zoning objective of the Seven Strategic Towns Local Area Plan 2018-2024 and is expected to yield 35 units. The principle of residential development is accepted within this zoning objective subject to compliance with the requirements of the plan, the Donegal Development Plan 2018-2024 and the relevant Section 28 guidelines.
- 6.2. It is important to note at this juncture that significant further information was submitted to the Council and a revised scheme was provided for within this information. The revised scheme provides for 2 apartment buildings at both the entrance and rear of the proposed development, 2 no. duplex units, 9 detached dwellings and 18 semi-detached units. The proposal increases the overall density of the development and provides for a total of 57 units.
- 6.3. The main issues for consideration before the Board can be summarised as follows:
- Visual & Residential Impact
 - Open Space
 - Access
 - Flooding
 - Capacity in foul sewer
 - Appropriate Assessment
 - Other issues

Visual & Residential Amenity

- 6.4. It is contended by the appellant that the proposed development includes the provision of three storey buildings, and this would be out of keeping with the existing pattern of development in the area. The applicant has responded to these concerns stating that an adequate separation distance has been provided between the proposed development and the existing dwellings in Farmleigh Park and also refers to the use of attic space within Farmleigh Park as being similar to that proposed within the appeal site.
- 6.5. The proposed development includes the provision of 2 no. 2/3 storey apartment blocks, which are to be located at the entrance to the development and to the rear. Block one which is positioned at the entrance to the development to the south west of the site is a 2/3 storey block of modern design. I note from the plans submitted that the central units in each floor are single aspect with a south western aspect. Corner units are afforded a dual aspect with circulation corridors located to the rear in a north eastern position.
- 6.6. Whilst the overall design of the building is typical of urban apartment blocks it is unresponsive to the context of the site. Both blocks merely book end the development and do little in the way of providing a sense of place within the development. The layout of the development appears to be overly dominated by hard landscaping and carparking and does not appear to integrate appropriately with existing established development in the area.
- 6.7. With regard to Block 1, I note that the three-storey element of this building is to be located directly adjacent to the rear private amenity areas associated with existing dwellings within Farmleigh Park. Separation distances provided are limited with pinch points of 17.6 metres. Balconies at this location will be c. 8 metres from the boundary of the appeal site and will directly overlook existing gardens within the adjacent development.
- 6.8. Having regard to the limited separation distances, I consider that the proposed apartment block no. 1 would appear overbearing when viewed from the existing dwellings which bound the development to the south west. In addition, I consider the provision of large balconies and windows along this elevation would result in an

unacceptable loss of privacy to the dwellings, having a serious negative impact on the levels of residential amenity currently enjoyed by these residents.

- 6.9. The proposed development, therefore, by virtue of its proximity to the rear private amenity areas of existing established dwellings to the west of the site, would be injurious to both the residential and visual amenity of the area and would be contrary to the provisions of the Donegal County Development Plan 2018-2024 in this regard.

Adequacy of open space

- 6.10. Appendix I of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 requires the following standards to be provided in terms of private amenity space:

Studio	4sqm
One bedroom	5 sqm
Two bedroom (3 persons)	6 sqm
Two bedroom (4 person)	7 sqm
Three bedroom	9 sqm

- 6.11. I note from the plans submitted that all apartments are provided with in excess of the minimum private open space required.
- 6.12. Communal open space serving apartment Block 1 is provided for to the west of the building along the boundary with Farmleigh Park in the form of a grassed strip of land. Whilst the quantum of space provided for within this section of land is in excess of that required, I consider that the usability of this space, directly adjacent to ground floor bedroom windows, is questionable and would not provide for an appropriate level of residential amenity for future residents of these units.
- 6.13. Communal open space associated with Block no. 2 is to be provided to south of the building and it is stated within the information submitted that gym equipment will be provided for within this space. The quantum of open space within this area is adequate to cater for the proposed apartments.
- 6.14. Private open space serving the proposed dwellings will be provided in the form of private rear gardens and a central communal green within the centre of the

development. Rear garden lengths range from 10 metres to c.6 metres with a number of properties being provided with c. 48 square metres of private open space. A stream flows along the northern and southern boundaries of the site and therefore restricts the garden lengths to the north. Such limited rear garden areas for 4 and 5 bedroom dwellings is unacceptable at this location.

- 6.14.1. Therefore, having regard to the quantum and quality of open space to be provided I consider that the proposed development would compromise the residential amenity of future residents and would be contrary to the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 and to the policy provisions within the Donegal Development Plan 2018-2024.

Access

- 6.15. Concerns have been raised within the grounds of appeal that the proposed access over an existing bridge does not have the capacity to cater for the proposed development and associated construction traffic. The appellants have submitted a structural report from an engineer which states that cracking has occurred at the bridge and subsidence is evident from the movement of boundary fences.
- 6.16. I note that the Council sought further information in this regard and in response the applicants submitted information which concluded that the existing bridge has the capacity to accommodate both the construction traffic and additional traffic movements arising from the proposed development. It is stated within the information submitted that cracking is evident within the bridge parapets, this is attributed to minor settlement of the foundations. This type of settlement is said to be expected. It is further stated that this settlement can occur for up to 7 years after a development is constructed and given that the bridge is now 15 years old no further movement is expected. Movement of garden fences is also said to be as a result of fill consolidation and given that such material is generally of a low-quality, little compaction would have occurred, thus allowing for movement.
- 6.17. The bridge design details have been submitted in addition to a photographic condition survey. Based on the information submitted I am satisfied that the applicants have adequately demonstrated that the proposed bridge and adjoining public road have the capacity to cater for the proposed development.

6.18. It is of note that the applicants have submitted details of traffic calming measures to be provided along the Old Laghy Road, these works are standard in nature and have been agreed with the Donegal Roads Department.

Flood

6.19. Concerns have been raised by the appellant within the grounds of appeal in relation to flooding. It is contended by the appellant that the proposed development will increase run off to the river and will exacerbate flooding in the area. I have consulted the flood maps for the area and note that the appeal site is not within a flood zone. I further note that the applicant has designed the proposed development in such a manner as to not increase greenfield run off rates. Attenuation is provided for within the scheme and will collect and control surface water run off at a pre-determined rate in order to ensure that the proposed development does not exacerbate flooding in the area.

6.20. I note that the Council's response to the grounds of appeal acknowledges that flood events within the area are unrelated to the development of this site and they are satisfied that the proposed attenuation works are sufficient to adequately manage run off from the proposed development.

6.21. Having regard to the foregoing and based on the information submitted, I consider that the proposed development in terms of run off has been designed in a manner which will not exacerbate or impact flood levels within the river.

Capacity in foul sewer

6.22. Concerns are raised in relation to the capacity of the foul sewer to cater for the proposed development. Adequate capacity is identified within the Donegal Development Plan to cater for the number of units proposed within the core strategy for Donegal Town. The Council addressed this concern within the assessment of the applicant and considered that there was adequate capacity within the foul sewer network to cater for the proposed development. I therefore consider that the proposed development is acceptable in this regard.

Appropriate Assessment

6.23. Concerns have been raised within the grounds of appeal in relation to the potential for the proposed development to impact the Fresh Water Pearl Mussel. The proposed

development is located c. 104 metres east of the Lough Eske and Ardnamona Wood SAC, the applicant has submitted an Ecological report in relation to the potential impacts arising from the development on the adjacent SAC. It is important to note that no NIS has been submitted. Streams bound the northern and southern boundaries of the site and discharge to the Lough Eske and Ardnamona Wood SAC. The Ecological report submitted states that measures proposed within the draft construction management plan will prevent any impact such as sedimentation or pollution occurring to the SAC. It is proposed to collect waters during construction in order to prevent sediment discharging to the river. Attenuation measures will also control run off rates and will protect the river in this regard.

- 6.24. It is evident from the information submitted that the applicant is attempting to screen out potential impacts to the Lough Eske and Ardnamona Wood SAC based on mitigation measures proposed, this is not acceptable.
- 6.25. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, the following European Sites are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

7.0 Table 1. European sites considered for Stage 1 screening

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor	Considered further in screening
Lough Eske and Ardnamona SAC 000163	104m	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Petrifying springs with tufa formation (Cratoneurion) [7220] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]	Direct hydrological link.	Yes - Potential for significant effects arising from disturbance of Salmon breeding

		<p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p>		<p>grounds, increased sedimentation of the river, contaminated surface water, runoff from construction</p>
<p>Donegal Bay SPA 004151</p>	c.1km	<p>Great Northern Diver (Gavia immer) [A003]</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Common Scoter (Melanitta nigra) [A065]</p> <p>Sanderling (Calidris alba) [A144]</p> <p>Wetland and Waterbirds [A999]</p>	Direct hydrological link	<p>Potential for water pollution to arise as a result of construction</p>
<p>Donegal Bay (Murvagh SAC) 000133</p>	c.1km	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170]</p> <p>Humid dune slacks [2190]</p> <p>Phoca vitulina (Harbour Seal) [1365]</p>	Direct hydrological link	<p>Potential for water pollution to arise as a result of construction</p>

7.1. I note from the information submitted that salmon breeding redds are stated as being present downstream of the proposed development, and the River Eske has a significant population of the Fresh Water Pearl Mussel. These species are particularly sensitive to changes in water quality. As stated within table 1 above there is a direct hydrological link from the appeal site to Lough Eske and Ardnamona SAC and

Donegal Bay SAC and SPA. Given this hydrological link, I consider that there is potential for significant impacts to occur upon the aforementioned Natura 2000 sites as a result of possible sedimentation of the river and/or water pollution arising from spillage during construction.

- 7.2. Therefore, based on my examination of the ecological report and supporting information submitted with the application, the scale of the proposed development, its likely effects by way of disturbance to salmon and potentially the Fresh Water Pearl Mussel and the potential to contaminate the Lough Eske and Ardnamona SAC, Donegal Bay SAC and SPA by way of water pollution and sedimentation from surface water runoff, I would conclude that a Stage 2 Appropriate Assessment is required for Lough Eske and Ardnamona SAC, Donegal Bay SAC and Donegal Bay SPA.
- 7.3. In the absence of a NIS being provided the applicant has failed to demonstrate that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the aforementioned Natura 2000 sites. The Board is therefore precluded from granting permission and the applicant will be refused on this basis.

Other Matters

- 7.4. It is contended by the appellant that the proposed development encroaches onto lands within his ownership. The applicant in response to these concerns has carried out an historical land folio search and states that an error has occurred in relation to the parcel of land under dispute. This is largely a legal matter and is not one that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons.

Conclusion

- 7.5. Having regard to the foregoing I consider the proposed development by virtue of the inadequate quantum and quality of open space, the overbearing nature of apartment block no.1 on existing low density residential development and the failure to carry out an Appropriate Assessment in relation to the potential for impacts to arise in relation to the Lough Eske and Ardnamona SAC, Donegal Bay SAC and Donegal Bay SPA would be an unacceptable form of development which would be contrary to the

provision of the Donegal Development Plan and the sustainable development of the area.

8.0 Recommendation

8.1. I recommend that permission is refused for the following reasons.

9.0 Reasons and Considerations

1. The Board is not satisfied on the basis of the information provided with the application and appeal that the proposed development individually, or in combination with other plans or projects would adversely affect the integrity of European Site No's. 000163, 000133 and 004151, Lough Eske and Ardnamona SAC, Donegal Bay SAC and Donegal Bay SPA, in view of these sites Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. Having regard to the limited size and poor quality of private open space proposed for Block no, 1 and for dwellings along the northern boundary of the site, and to the limited separation distance provided between Block no.1 and existing residential dwellings to the west of the site, the Board considered that the proposed development would result in a substandard form of development which would result in an unacceptable loss of privacy to existing properties in Farmleigh Park. The development would, by reason of the foregoing, be an overdevelopment of the site and would be contrary to the provisions of the Donegal Development Plan. The proposed development would, therefore, seriously injure the residential amenities of the existing and future residents of the site and would be contrary to the proper planning and sustainable development of the area.

Sarah Lynch
Planning Inspector

02 June 2020