

**An
Bord
Pleanála**

Board Direction

BD-012021-23

ABP-314448-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 17/04/2023.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

In coming to its decision the Board had regard to the following:

- (i) the site's location on lands with zoning objectives for residential development, buffer zone and open space, and objective provisions in the Clare County Development Plan 2017 - 2023 in respect of residential development,
- (ii) the nature, scale and design of the proposed development which is consistent with the provisions of the Clare County Development Plan 2017 - 2023 and appendices contained therein,
- (iii) to the Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- (iv) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, and the accompanying Urban Design Manual – A Best Practice

Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009,

(v) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of the Housing and Planning and Local Government, December 2020,

(vi) Urban Development and Building Heights Guidelines for Planning Authorities, issued by the Department of the Housing and Planning and Local Government, December 2018.

(vii) Housing for All, issued by the Department of Housing, Local Government and Heritage in September 2021,

(viii) the availability in the area of social and transport infrastructure,

(ix) to the pattern of existing and permitted development in the area, and

(x) Chief Executive's Report and supporting technical reports of Clare County Council,

(xi) to the submissions and observations received,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment (AA)

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, the Natura Impact Statement Report submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board

adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, other than Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037) which is the European site for which there is a potential likelihood of significant effects.

Appropriate Assessment (Stage 2)

The Board considered the Natura Impact Statement and all other relevant submissions on the file and carried out an Appropriate Assessment of the implications of the proposed development on Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the appropriate assessment, the Board considered, in particular, the following: a) the site-specific conservation objectives for the European site, b) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and in particular the risk of impacts on lesser horseshoe bats, c) the mitigation measures which are included as part of the current proposal. In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European Site in view of the sites conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions from the Planning Authority, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation (including environmental conditions) and are incorporated into the Board's decision.

Reasoned Conclusions on the Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment and the results of the examination set out in the Inspector's Report.

The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. A Construction Management Plan is the overarching general mitigation relevant to the project design and delivery for the construction stage.

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

Population and Human Health: Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the area.

Biodiversity: Potential effects from change of an agricultural site to urban development with loss of habitats relating to birds, mammals and bat species. With mitigation in place including retaining trees and hedgerow and providing additional landscaping there will be no significant adverse effects on biodiversity.

Land and soil: Direct effects on land and soil with construction excavation and change of agricultural land to residential development. Construction impacts will be mitigated with construction management measures with no significant effects.

Operational impact is long-term but no a significant adverse effect.

Water: Potential indirect effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the municipal foul sewerage system, and which will be mitigated during construction by appropriate construction management measures. No significant effects during construction or operational phase.

Air Quality and climate: Potential effects arising from noise, vibration and dust during construction which are temporary and will be mitigated by construction management measures. Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme. No significant effects during the operation phase.

Cultural Heritage: A significant potential negative effect on the cultural heritage of the area arising from the potential disturbance of previously undiscovered archaeological material on site but which would be mitigated by plans for archaeological monitoring leading to no significant effects.

Landscape: A significant direct effect on land and the landscape by the change in the use and appearance of a relatively large site from agricultural to residential. Given the location of the site within the urban boundary of Ennis and the public need for housing there, this effect would not have a significant negative impact on the environment.

Material Assets: Temporary impacts during construction phase with increased traffic with mitigation in the form of a construction traffic management plan, with no significant long term effects. No significant effects on the road network during the operational phase with the network having sufficient capacity. No significant effects are anticipated in relation to the supply of utilities. Mitigation is formed of adherence to relevant codes of practice, design guidance and consultation with local and statutory authorities.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, or historic environment, would be acceptable in terms of urban design, height, scale, mass, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would,

therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this conclusion, specific regard was had to the issues raised in the Chief Executive Report and its recommendation that permission be refused.

The Board considered that the proposed development is, apart from the stipulation for low density residential at this location, broadly compliant with the current Clare County Development Plan 2017 - 2023 and would therefore be in accordance with the proper planning and sustainable development of the area.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would materially contravene the Clare County Council Development Plan 2017-2023 with respect the stipulation that residential development at this location be low density residential with a maximum density of 15 units per hectare. The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Clare Council Development Plan 2017-2024 would be justified for the following reasons and considerations:

- With regard to S.37(2)(b)(i), the proposed development is in accordance with the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016. The proposed development delivers on the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016, is within the development envelope of Ennis as defined by the Clare County Development Plan 2017-2023 and is classified as a County Town / Hub under the settlement hierarchy.
- With regard to S.37(2)(b)(iii), the proposed development in terms of its density is in accordance with as described in Rebuilding Ireland, An Action Plan for Housing and Homelessness and Project Ireland 2040 – National Planning Framework; the Sustainable Residential Development in Urban Areas Planning Guidelines 2009 and Urban Development and Building Heights Guidelines (2018), in particular SPPR4.

The application site is located on the outskirts of Ennis and would constitute an Outer Suburban/Greenfield site.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report submitted with this application as set out in Chapter 15 of the EIAR 'Summary of EIAR Mitigation and Monitoring', shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

3. Mitigation and monitoring measures outlined in the Natura Impact Statement submitted with this application, shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

4. Details of the materials, colours and textures of all the external finishes to the proposed building shall be as submitted with the application, unless otherwise agreed in writing with, the Planning Authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

5. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

6. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartment unit.

Reason: In the interests of amenity and public safety.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

8. The road network serving the proposed development, including turning bays, junction with the public road, parking areas, footpaths and kerbs, access road to

service areas shall be in accordance with the detailed construction standards of the Planning Authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

9. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. All car parking spaces shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose.

(b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the Planning Authority.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units and the remaining development.

10. A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/ points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development. The car parking spaces for sole use of the car sharing club shall also be provided with functioning EV charging stations/ points.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

11. The level of communal bicycle parking spaces specified (130) shall be provided within the site. Details of the layout, marking demarcation and security provisions

for these spaces shall be as submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

12. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

Reason: In the interest of public health and surface water management.

13. The developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

14. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

15. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company
(b) Details of the management company contract, and drawings/particulars

describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

16. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the Planning Authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

17. Construction waste shall be managed in accordance with a construction waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the

Region in which the site is situated.

Reason: In the interest of sustainable waste management.

18. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development with measures to reflect mitigation described in the submitted EIAR for the application, in addition to the following:

- a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- b) Location of access points to the site for any construction related activity;
- c) Location of areas for construction site offices and staff facilities;
- d) Details of site security fencing and hoardings;
- e) Details of on-site car parking facilities for site workers during the course of construction;
- f) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- g) Measures to obviate queuing of construction traffic on the adjoining road network;
- h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- i) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;

m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

Reason: In the interest of amenities, public health and safety.

19. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, 0800 to 1400 on Saturday and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

20. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) engage the services of a suitably qualified archaeologist to co-ordinate the mitigation proposals contained in the Archaeological Assessment report for archaeological excavation (preservation by record) of Archaeological Areas 1-4 in advance of construction works and Archaeological Monitoring of ground disturbance at construction stages across the development site,

(b) should previously unidentified archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Department of Housing, Local Government and Heritage with regard to any necessary mitigating action (e.g. preservation *in situ*, or excavation) and should facilitate the archaeologist in recording any material found.

(c) the planning authority and the Department of Housing, Local Government and Heritage shall be furnished with a report describing the results of the monitoring.

Reason: To ensure the continued preservation (either *in situ* or by record) of places, caves, site, features or other objects of archaeological interest.

21. Prior to the commencement of development the applicant/developer shall submit to be agreed in writing with the Planning Authority amended plans altering the internal layout of the childcare facility to comply with requirements of Clare County Childcare Committee.

Reason: In the interest of orderly development.

22. Prior to the commencement of development the applicant shall submit for written consent of the Planning Authority, detail of secure fencing around the infiltration basement to prevent public access. Such fencing should allow for movement of small mammals through the site.

Reason: In the interests of public safety and biodiversity.

23. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

24. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the Planning Authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the Planning Authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Act 2000, as amended, and of the housing strategy in the development plan of the area.

25. Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains,

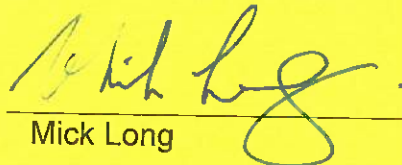
drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

26. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member


Mick Long

Date: 17/04/2023

