

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2017

Laois County Council

Planning Register Reference Number: 17/147

An Bord Pleanála Reference Number: ABP-300178-17

Appeal by Joe and Anne Cunningham of 31 Carriglea, Killenard, County Laois and by others against the decision made on the 25th day of October, 2017 by Laois County Council to grant subject to conditions a permission to Mark Fox care of Kilgallen and Partners Consulting Engineers Limited of Kylekiproe, Well Road, Portlaoise, County Laois in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a retirement village on a site at Tierhogar, Killenard, County Laois. The development will consist of a nursing care centre of 116 number beds and 40 number assisted living units, 65 number sheltered homes, one number warden's gate lodge and ancillary support facilities comprising medical consulting rooms and dispensary, gym/pool, bistro/restaurant, community meeting room, bored well, surface water attenuation system, plant room and services, entrance and all associated site works.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

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.

Reasons and Considerations

Having regard to the:

- “Community, Education and Institutional” zoning provisions of the Laois County Development Plan, 2017-2023 where Nursing Home/Sheltered Housing is open for consideration,
- Housing policies for the elderly in the Laois County Development Plan, 2017-2023 in particular to HP8 to HP11,
- Proposal to connect to the existing public water mains and public sewer and to utilise and develop an existing surface water discharge system for the adjoining housing estate to the west,
- Traffic Management Plan for Construction (Drawing number 15092-204) submitted to the planning authority on the 29th day of September, 2017, and
- Mobility Management Plan (submitted as further information to the planning authority on the 25th day of August 2017),

the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area and of the village, would not pose a risk to pedestrian and traffic safety and, therefore, would be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the sheltered housing was a residential care element of a well-considered nursing care centre which was in keeping with the overall community zoning provisions for the site and the general pattern of development in the village. The Board noted the siting of the primary service area adjacent to residential properties to the south but were cognizant that these lands were zoned for development and considered that given the nature of the proposed nursing care centre the level of usage was unlikely to seriously injure the residential amenity of these properties.

In disagreeing with the Inspectors' recommendation to refuse permission on the basis that the proposed development would not accord with the requirements of the Design Manual for Urban Roads and Streets (DMURS), issued in March 2013, the Board considered that the development could be conditioned to ensure compliance and in particular to ensure that the internal roads were reduced in width to enhance pedestrian safety within the centre. Furthermore, the Board considered the Traffic and Transport Assessment and the Mobility Management Plan and considered that the centre was designed to be sustainable in terms of the availability of care and amenities for residents within the nursing care centre site and considered that the proposed development would have an acceptable impact on the roads and traffic in the vicinity of the site.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25th day of August, 2017 and on the 29th day of September, 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) No material change of use of any of the buildings in the proposed development shall take place without prior planning permissions.
- (b) The occupation of the assisted living units and sheltered homes within the proposed development are restricted to the age cohort 55 and over and shall not be sold, let or otherwise transferred or conveyed away from its residential care use without prior planning permission.

The proposed assisted housing units and sheltered homes shall remain in the ownership of the Management Company/Developer and shall not be sold to private individuals as habitable dwellings.

Reason: In the interest of clarity.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority (including any required safety measures for the proposed attenuation basin) for such works and services.

Reason: In the interest of public health.

4. (a) All foul sewage and soiled water shall be discharged to the public foul sewer. Details of proposals to discharge and connect to the existing wastewater network in Killenard, which requires the completion of the proposed upgrade works to the Killenard Pumping Station to address existing capacity issues, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of any development on the site.
- (b) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

Reason: In the interest of public health.

5. 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.

6. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any sheltered house.

Reason: In the interests of amenity and public safety.

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

Reason: In the interest of visual amenity.

8. Details for proposed lay-bys on the local road network and for the internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, access road to the service area shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

9. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

10. The construction of the development shall be managed in accordance with a Construction 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, including:
- (a) location of the site and materials compounds including areas identified for the storage of construction refuse,
 - (b) location of areas for construction site offices and staff facilities,
 - (c) details of site security fencing and hoardings,
 - (d) details of on-site car parking facilities for site workers during the course of construction,
 - (e) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
 - (f) 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,
 - (g) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
 - (h) 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,
 - (i) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil, and
 - (j) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

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

11. The construction of the development shall be managed in accordance with a Construction Traffic Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

12. Construction and demolition waste shall be managed in accordance with a construction waste and demolition 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.

Reason: In the interest of sustainable waste management.

13. A plan, containing details for the management of waste (and, in particular, recyclable materials) within the nursing care centre, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

14. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

15. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the sheltered housing and assisted living units are made available for occupation.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

16. A comprehensive boundary treatment and landscaping scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following: -

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development,
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings,
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating, and
- (d) details of proposed boundary treatments (including a wall to be built along the northern boundary backing onto the railway line) at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

17. No signage, advertising structures/advertisements, or other projecting elements, including flagpoles, shall be erected within the site, on adjoining lands under the control of the applicant, or on the approach thoroughfares unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

18. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development, including the external fabric of the buildings, internal common areas (residential and commercial), open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to, and agreed in writing with, the planning authority, before any of the units are made available for occupation.

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

19. 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 of roads, footpaths, watermains, drains, 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 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 of the development.

20. 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.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.